

EXHIBIT 9

Carlton Hershman

3/16/2021

Page 1	Page 2
<p>IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA WESTERN DIVISION</p> <p>CASE NUMBER 7:19-cv-00403-RDP</p> <p>ADAM JONES and JOSHUA HASTINGS, Plaintiff(s), vs. BUZZFEED, INC., BUZZFEED NEWS, BEN SMITH, and KATIE J.M. BAKER, Defendant(s).</p> <p>VIDEO AND ZOOM DEPOSITION TESTIMONY OF: CARLTON R. HERSHMAN, JR.</p> <p>MARCH 16, 2021 10:01 a.m. COURT REPORTER: NANCY W. PANNELL, CCR The reading and signing of this deposition has NOT been waived</p>	<p>1 CARLTON R. HERSHMAN, JR. 2 INSTRUCTIONS TO THE WITNESS 3 4 Please read your deposition 5 over carefully before you sign it. You 6 should make all your changes on the 7 attached errata sheet. 8 After making any changes 9 which you have noted on the attached 10 errata sheet, sign your name on the 11 Deponent's Certificate and date it. You 12 are signing it subject to the changes you 13 have made on the errata sheet, which will 14 be attached to the deposition. 15 Return the attached errata 16 sheet and Deponent's Certificate to 17 Birmingham Reporting, 3710 4th Avenue 18 South, Birmingham, Alabama 35222. 19 According to the Rules of 20 Civil Procedure, you will have thirty (30) 21 days from the date you receive this 22 deposition in which to read it, sign it, 23 and return the errata sheet and Deponent's</p>
Page 3	Page 4
<p>1 Certificate to the above office. If you 2 fail to do so, you automatically waive 3 your right to make any corrections to your 4 deposition. 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>	<p>1 ERRATA SHEET 2 PAGE LINE EXPLANATION 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>

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<p style="text-align: right;">Page 5</p> <p>1 DEPONENT'S CERTIFICATE</p> <p>2</p> <p>3 I, CARLTON R. HERSHMAN, the</p> <p>4 witness herein, have read the transcript</p> <p>5 of my testimony and the same is true and</p> <p>6 correct, to the best of my knowledge. Any</p> <p>7 corrections and/or additions, if any, are</p> <p>8 listed separately.</p> <p>9</p> <p>10 _____</p> <p>11 CARLTON R. HERSHMAN, JR.</p> <p>12</p> <p>13 _____</p> <p>14 DATE</p> <p>15</p> <p>16 Sworn to and subscribed</p> <p>17 before me, this the ____ day of</p> <p>18 _____, 2021, to certify my hand</p> <p>19 and seal of office.</p> <p>20</p> <p>21 _____</p> <p>22 NOTARY PUBLIC</p> <p>23</p>	<p style="text-align: right;">Page 6</p> <p>1 S T I P U L A T I O N</p> <p>2 IT IS STIPULATED AND AGREED</p> <p>3 by and between the parties through their</p> <p>4 respective counsel that the VIDEO AND ZOOM</p> <p>5 DEPOSITION of CARLTON R. HERSHMAN, JR.,</p> <p>6 may be taken before Nancy W. Pannell,</p> <p>7 Certified Shorthand Reporter and Notary</p> <p>8 Public, State at Large, at the Birmingham</p> <p>9 Reporting Service WorkSouth Tuscaloosa</p> <p>10 office, 1490 Northbank Parkway,</p> <p>11 Tuscaloosa, Alabama 35406, on MARCH 16,</p> <p>12 2021, commencing at approximately 10:01</p> <p>13 a.m.</p> <p>14 IT IS FURTHER STIPULATED AND</p> <p>15 AGREED that the signature to and the</p> <p>16 reading of the deposition by the witness</p> <p>17 IS NOT waived, the deposition to have the</p> <p>18 same force and effect as if full</p> <p>19 compliance had been had with all laws and</p> <p>20 rules of Court relating to the taking of</p> <p>21 depositions.</p> <p>22 IT IS FURTHER STIPULATED AND</p> <p>23 AGREED that it shall not be necessary for</p>																																										
<p style="text-align: right;">Page 7</p> <p>1 any objections to be made by counsel to</p> <p>2 any questions, except as to form or</p> <p>3 leading questions, and that counsel for</p> <p>4 the parties may make objections and assign</p> <p>5 grounds at the time of trial or at the</p> <p>6 time said deposition is offered in</p> <p>7 evidence, or prior thereto.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>	<p style="text-align: right;">Page 8</p> <p>1 I N D E X</p> <p>2</p> <table border="0"> <tr> <td>3 EXAMINATION BY:</td> <td style="text-align: right;">PAGE NO.</td> </tr> <tr> <td>4 MR. RITCHEY</td> <td style="text-align: right;">13</td> </tr> <tr> <td>5 CERTIFICATE</td> <td style="text-align: right;">289</td> </tr> <tr> <td>6</td> <td></td> </tr> <tr> <td>7</td> <td></td> </tr> <tr> <td>8 INDEX OF EXHIBITS</td> <td></td> </tr> <tr> <td>9</td> <td></td> </tr> <tr> <td>10 PLAINTIFF'S EXHIBITS:</td> <td style="text-align: right;">PAGE NO.</td> </tr> <tr> <td>11 117 Hershman CV</td> <td style="text-align: right;">29</td> </tr> <tr> <td>12 118 Hershman Expert Report</td> <td style="text-align: right;">98</td> </tr> <tr> <td>13 119 BuzzFeed 4167</td> <td style="text-align: right;">218</td> </tr> <tr> <td>14</td> <td></td> </tr> <tr> <td>15</td> <td></td> </tr> <tr> <td>16</td> <td></td> </tr> <tr> <td>17</td> <td></td> </tr> <tr> <td>18</td> <td></td> </tr> <tr> <td>19</td> <td></td> </tr> <tr> <td>20</td> <td></td> </tr> <tr> <td>21</td> <td></td> </tr> <tr> <td>22</td> <td></td> </tr> <tr> <td>23</td> <td></td> </tr> </table>	3 EXAMINATION BY:	PAGE NO.	4 MR. RITCHEY	13	5 CERTIFICATE	289	6		7		8 INDEX OF EXHIBITS		9		10 PLAINTIFF'S EXHIBITS:	PAGE NO.	11 117 Hershman CV	29	12 118 Hershman Expert Report	98	13 119 BuzzFeed 4167	218	14		15		16		17		18		19		20		21		22		23	
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<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE PLAINTIFF(S): @Birmingham</p> <p>4 Reporting WorkSouth Tuscaloosa office</p> <p>5 MR. BOBBY H. COCKRELL, JR.</p> <p>6 MR. G. SCOTCH RITCHEY, JR.</p> <p>7 COCKRELL, COCKRELL, TOWNSEND &</p> <p>8 RITCHEY, LLP</p> <p>9 1409 UNIVERSITY BOULEVARD</p> <p>10 TUSCALOOSA, ALABAMA 35401</p> <p>11</p> <p>12 FOR THE DEFENDANT(S): (Via Zoom)</p> <p>13 MS. KATHERINE M. BOLGER</p> <p>14 DAVIS, WRIGHT, TREMAINE, LLP</p> <p>15 1251 AVENUE OF THE AMERICAS</p> <p>16 21ST FLOOR</p> <p>17 NEW YORK, NEW YORK, 10020-1104</p> <p>18</p> <p>19 MR. JOHN G. "JT" THOMPSON (Via Zoom)</p> <p>20 LIGHTFOOT FRANKLIN & WHITE</p> <p>21 400 NORTH 20TH STREET</p> <p>22 THE CLARK BUILDING</p> <p>23 BIRMINGHAM, ALABAMA, 35203</p>	<p>1</p> <p>2 ALSO PRESENT:</p> <p>3 Nancy Pannell, court reporter,</p> <p>4 @WorkSouth Tuscaloosa</p> <p>5 Trevor Webster, Zoom Host</p> <p>6 @Birmingham Reporting</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p>
Page 11	Page 12
<p>1 I, Nancy W. Pannell, a</p> <p>2 Certified Shorthand Reporter of</p> <p>3 Birmingham, Alabama, and a Notary Public</p> <p>4 for the State of Alabama at Large, acting</p> <p>5 as Commissioner, certify that on this</p> <p>6 date, pursuant to the Federal Rules of</p> <p>7 Civil Procedure and the foregoing</p> <p>8 stipulation of counsel, there came before</p> <p>9 me at the offices of Birmingham Reporting</p> <p>10 Service WorkSouth Tuscaloosa office, 1490</p> <p>11 Northbank Parkway, Tuscaloosa, Alabama,</p> <p>12 commencing at approximately 10:01 a.m. on</p> <p>13 MARCH 16, 2021, CARLTON R. HERSHMAN, JR.,</p> <p>14 witness in the above cause, for oral</p> <p>15 examination, whereupon the following</p> <p>16 proceedings were had:</p> <p>17</p> <p>18</p> <p>19 VIDEOGRAPHER: We are now on</p> <p>20 the record. This is the video deposition</p> <p>21 of Carlton Hershman, in the matter of Adam</p> <p>22 Jones, et al., versus BuzzFeed, Inc., et</p> <p>23 al., Case Number 7:19-CV-00403-RDP in the</p>	<p>1 United States District Court for the</p> <p>2 Northern District of Alabama, Western</p> <p>3 Division.</p> <p>4 Today's date is March 16,</p> <p>5 2021 and the time is 10:01 a.m. Would</p> <p>6 counsel introduce yourself into the</p> <p>7 record, after which time the court</p> <p>8 reporter will swear in the witness.</p> <p>9 MR. RITCHEY: Scotch Ritchey</p> <p>10 for the plaintiffs.</p> <p>11 MR. COCKRELL: Bob Cockrell</p> <p>12 for the plaintiffs.</p> <p>13 MS. BOLGER: Kate Bolger on</p> <p>14 behalf of the defendants and the witness,</p> <p>15 and with me is my co-counsel JT Thompson.</p> <p>16 CARLTON R. HERSHMAN, JR.,</p> <p>17 being first duly sworn, was examined and</p> <p>18 testified as follows:</p> <p>19 COURT REPORTER: Thank you.</p> <p>20 And will this be usual stipulations?</p> <p>21 MR. RITCHEY: That's fine.</p> <p>22 MS. BOLGER: We would like</p> <p>23 to read this one.</p>

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<p>1 EXAMINATION</p> <p>2 BY MR. RITCHEY:</p> <p>3 Q. Will you please state your name</p> <p>4 for the record?</p> <p>5 A. Carlton Ray Hershman, Jr.</p> <p>6 Q. Mr. Hershman, I'm Scotch Ritchey,</p> <p>7 and I'm representing the plaintiffs in</p> <p>8 this case and I appreciate you sitting</p> <p>9 down for this deposition and I'll just be</p> <p>10 asking a few questions.</p> <p>11 I'll go over just a few ground</p> <p>12 rules for the deposition. If you need a</p> <p>13 break, just let us know, we'll be happy to</p> <p>14 let you take a break.</p> <p>15 Since this is over Zoom, we may</p> <p>16 have some lag or disconnect over this</p> <p>17 deposition so if you don't hear a</p> <p>18 question, let me know or if it breaks up,</p> <p>19 let me know, I'll be happy to repeat it.</p> <p>20 If you don't understand a question</p> <p>21 I ask, please ask me for clarification</p> <p>22 I'll be happy to do so. And, again, since</p> <p>23 this is over Zoom, if you would give me a</p>	<p>1 second to complete my question and I'll</p> <p>2 give you some time to answer as well.</p> <p>3 This will just allow the court</p> <p>4 reporter to get everything down and have</p> <p>5 that clean record.</p> <p>6 And also if you'll give audible</p> <p>7 answers, yes or no, that will be great</p> <p>8 just to get that clean record again. And</p> <p>9 if I say is that a yes or is that a no,</p> <p>10 I'm not trying to get on to you, just</p> <p>11 trying to get that record clear.</p> <p>12 But if you answer, then we'll</p> <p>13 assume that you heard and understood the</p> <p>14 question; is that fair?</p> <p>15 MS. BOLGER: I object to</p> <p>16 that instruction, but you can answer it.</p> <p>17 A. That's fair.</p> <p>18 Q. (By Mr. Ritchey) Are there any</p> <p>19 reasons why you cannot answer truthfully</p> <p>20 and fully today?</p> <p>21 A. No.</p> <p>22 Q. Is there anything that would</p> <p>23 interfere with you answering questions</p>
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<p>1 today?</p> <p>2 A. No.</p> <p>3 Q. Have you ever given a deposition</p> <p>4 before?</p> <p>5 A. Yes.</p> <p>6 Q. How many times?</p> <p>7 A. I would probably say around 20 or</p> <p>8 so.</p> <p>9 Q. Were all of those in criminal</p> <p>10 trials or were those in civil trials as</p> <p>11 well, or civil cases?</p> <p>12 A. Those were all criminal, except</p> <p>13 for I want to say two.</p> <p>14 Q. And what were those two civil</p> <p>15 cases where you gave a deposition?</p> <p>16 A. One was a case involving a female</p> <p>17 who had been a victim of a masseuse, where</p> <p>18 as she had gone in for a massage and was</p> <p>19 digitally penetrated by the masseuse with</p> <p>20 his finger.</p> <p>21 And my portion of that was to</p> <p>22 speak as an expert and also to speak with</p> <p>23 -- to take the victim and witness</p>	<p>1 statements and also spoke with the suspect</p> <p>2 where he confessed to it. And this</p> <p>3 masseuse worked at a hotel.</p> <p>4 Q. Did you investigate that crime?</p> <p>5 A. No, I did not.</p> <p>6 Q. Do you remember when this case</p> <p>7 was?</p> <p>8 A. I want to say my portion of it was</p> <p>9 2018, 2018.</p> <p>10 Q. Okay. Do you remember what court</p> <p>11 that was in?</p> <p>12 A. I'm sorry, I do not. It was here</p> <p>13 in San Diego.</p> <p>14 Q. San Diego. Do you remember the</p> <p>15 plaintiffs or defendant's name in that</p> <p>16 case?</p> <p>17 A. I do not. I can get it for you.</p> <p>18 They were -- he's from Europe so he had</p> <p>19 like a Slovakian last name.</p> <p>20 Q. Were you hired by the plaintiff in</p> <p>21 that case?</p> <p>22 A. I was.</p> <p>23 Q. Do you remember if you had any</p>

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<p>1 contact with the plaintiff's attorney in</p> <p>2 that case?</p> <p>3 A. Yes, I did.</p> <p>4 Q. Do you remember his or her name?</p> <p>5 A. Daniel Gilliland.</p> <p>6 Q. Did you write a report, an expert</p> <p>7 report for that case?</p> <p>8 A. I did not.</p> <p>9 Q. Did that case go to trial?</p> <p>10 A. No, it did not.</p> <p>11 Q. Do you remember what you said at</p> <p>12 the deposition just in general?</p> <p>13 A. Because I had interviewed the</p> <p>14 victim, that deposition was more or less</p> <p>15 what she had told me.</p> <p>16 The only thing that I prepared for</p> <p>17 that was her victim's -- or a statement</p> <p>18 from her. And also when I interviewed</p> <p>19 him, obviously the confession.</p> <p>20 So I didn't do an expert report.</p> <p>21 The only reports that I did was their</p> <p>22 statements to me and they were both</p> <p>23 recorded anyway, but I typed one out.</p>	<p>1 Q. Do you know if that case was</p> <p>2 settled?</p> <p>3 A. I don't know.</p> <p>4 Q. Did the plaintiff pay you for your</p> <p>5 testimony?</p> <p>6 A. Yes.</p> <p>7 Q. All right. And then what about</p> <p>8 the second one you mentioned?</p> <p>9 A. The second one was a female who</p> <p>10 was being stalked by an ex-boyfriend who</p> <p>11 lived in Florida and she lived here in San</p> <p>12 Diego.</p> <p>13 He flew out here to San Diego and</p> <p>14 over a three-day period that they were</p> <p>15 together there was some domestic violence</p> <p>16 going on. And the last day of that</p> <p>17 domestic violence he ends up sexually</p> <p>18 assaulting her.</p> <p>19 I'm sorry, it was an attempted</p> <p>20 sexual assault. She was able to --</p> <p>21 somebody knocked on the door or banged on</p> <p>22 the wall, I can't remember now, he stopped</p> <p>23 his attack and then left.</p>
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<p>1 So she ended up civilly suing him</p> <p>2 for his actions.</p> <p>3 Q. And do you know when that was case</p> <p>4 was?</p> <p>5 A. I believe that was 2018 as well.</p> <p>6 Could have been the early portion of 2019</p> <p>7 that it was -- that I testified.</p> <p>8 Q. Okay. Do you remember the</p> <p>9 plaintiff or defendant's name in that</p> <p>10 case?</p> <p>11 A. I do not.</p> <p>12 THE WITNESS: Can I check</p> <p>13 something in my report? I might have it</p> <p>14 in that, in the front.</p> <p>15 MS. BOLGER: That's all</p> <p>16 right, Carl. You don't need to do that.</p> <p>17 THE WITNESS: Okay.</p> <p>18 Q. (By Mr. Ritchey) Were you hired by</p> <p>19 the plaintiff in that case?</p> <p>20 A. I was.</p> <p>21 Q. Did you write an expert report in</p> <p>22 that case?</p> <p>23 A. I believe I did.</p>	<p>1 Q. Do you still have a copy of that</p> <p>2 expert report?</p> <p>3 A. I probably do, yes.</p> <p>4 Q. Okay. Would you mind producing</p> <p>5 that to us?</p> <p>6 MS. BOLGER: I'll take it</p> <p>7 under advisement.</p> <p>8 THE WITNESS: Yes.</p> <p>9 MS. BOLGER: I'll take it</p> <p>10 under advisement. We'll get back to you</p> <p>11 about that.</p> <p>12 Q. (By Mr. Ritchey) Okay.</p> <p>13 Did you have any contact with the</p> <p>14 plaintiff's attorney?</p> <p>15 A. Yes.</p> <p>16 Q. And who was that contact?</p> <p>17 A. It was his first name is Samuel,</p> <p>18 and I'm trying to remember his last name.</p> <p>19 I can't remember right now. It will come</p> <p>20 to me.</p> <p>21 Q. That's all right.</p> <p>22 Do you remember what firm he</p> <p>23 worked for?</p>

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<p>1 A. It's his firm, so.</p> <p>2 Q. Okay. And was that case in San</p> <p>3 Diego, too?</p> <p>4 A. It was.</p> <p>5 Q. Do you remember what court that</p> <p>6 was in?</p> <p>7 A. I do not. I can't remember.</p> <p>8 Q. And in general what was your</p> <p>9 expert report concerning?</p> <p>10 A. Just how she did not report her</p> <p>11 assault to the police right away, that not</p> <p>12 all stalking victims report that they're</p> <p>13 being stalked, so the delayed reporting.</p> <p>14 There was some behavioral evidence</p> <p>15 such as her continuing to stay in contact</p> <p>16 with him. So along those lines.</p> <p>17 Q. Okay.</p> <p>18 A. Basically victim behavior.</p> <p>19 Q. Did your testimony in that case</p> <p>20 fall along those same lines?</p> <p>21 A. It did.</p> <p>22 Q. Did the plaintiff pay you for that</p> <p>23 testimony?</p>	<p>1 A. Yes.</p> <p>2 Q. Do you know if that case went to</p> <p>3 trial?</p> <p>4 A. I don't know.</p> <p>5 Q. Do you know the outcome of that</p> <p>6 case?</p> <p>7 A. I don't know. I usually don't</p> <p>8 follow up with stuff like that.</p> <p>9 Q. Are there any other civil cases</p> <p>10 where you were hired as an expert witness?</p> <p>11 A. Yes, there was one other one.</p> <p>12 Q. Okay. What was that one about?</p> <p>13 A. That was a college student who had</p> <p>14 gotten severely intoxicated and she became</p> <p>15 blacked out and later passed out.</p> <p>16 She was in her own dorm room with</p> <p>17 her roommate and there were two males that</p> <p>18 were visiting, and during the night they</p> <p>19 were playing drinking games which included</p> <p>20 taking shots of alcohol.</p> <p>21 And she becomes at one point</p> <p>22 blacked out and there's several things</p> <p>23 that happened that she didn't remember in</p>
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<p>1 the living room and then she passed out in</p> <p>2 the living room.</p> <p>3 She ended up waking up and she was</p> <p>4 in her own bedroom with one of the males</p> <p>5 having active intercourse with her.</p> <p>6 She jumps up and runs out of her</p> <p>7 dorm room into the street across this</p> <p>8 little open field, short field, into a</p> <p>9 parking lot where a school safety officer</p> <p>10 found her along with her roommate who ran</p> <p>11 after her.</p> <p>12 And they end up -- ended up</p> <p>13 determining they didn't think a sexual</p> <p>14 assault occurred. They did take her to</p> <p>15 the hospital to get tested.</p> <p>16 They drove the suspect home to his</p> <p>17 apartment five miles away. And the</p> <p>18 follow-up with the school's side of it was</p> <p>19 inadequate and violated their MOU and San</p> <p>20 Diego Police Department was eventually</p> <p>21 called came in and worked the case.</p> <p>22 Q. Were you involved in any of the</p> <p>23 investigation of that case?</p>	<p>1 A. I was not.</p> <p>2 Q. You said MOU. What is that?</p> <p>3 A. Memorandum of understanding.</p> <p>4 Q. And what is that?</p> <p>5 A. It's kind of like the SOP.</p> <p>6 Q. And that would be for the school?</p> <p>7 A. I'm sorry, say again.</p> <p>8 Q. And you said it was like an SOP?</p> <p>9 A. Kind of. It was an understanding</p> <p>10 between the school and the San Diego</p> <p>11 Police Department.</p> <p>12 So the way it's written is the</p> <p>13 school they were sworn officers but they</p> <p>14 did not have detectives, and any violent</p> <p>15 crime such as sexual assaults, assault and</p> <p>16 battery with injury, DUI with injury,</p> <p>17 homicide, any of those type of felonious</p> <p>18 assaults the school will immediately call</p> <p>19 the San Diego Police Department and they</p> <p>20 would come in, their detective would come</p> <p>21 in and take over the case, which in that</p> <p>22 case was not done immediately.</p> <p>23 Q. What school was that?</p>

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<p>1 A. That was the University of San 2 Diego. Not San Diego State. Everybody 3 messes that up. 4 University of San Diego. It's a 5 private school. 6 Q. Okay. Do you remember the 7 plaintiffs or defendants' names in that 8 case? 9 A. No, I do not. I never spoke with 10 any of them. 11 Q. Okay. Did they sue the 12 university? Did the plaintiffs sue the 13 university? 14 A. They did. 15 Q. Were you hired by the plaintiffs 16 in that case? 17 A. I was. 18 Q. Did you write an expert report in 19 that case? 20 A. Yes, I did. 21 Q. Do you still have a copy of that? 22 A. I do. 23 Q. Do you mind producing that?</p>	<p>1 MS. BOLGER: I'll answer 2 that, which is that we'll take that under 3 advisement and get back to you. 4 Q. (By Mr. Ritchey) And what was the 5 general line of your expert report? 6 MS. BOLGER: Object to the 7 form. 8 You can answer, Carl. 9 A. In that case? 10 Q. (By Mr. Ritchey) Right, in that 11 case. 12 A. In the San Diego case? 13 That the officers did not follow 14 their standard operating procedures and 15 how their actions hindered the case. 16 That case ended up going to the 17 district attorney's office, but because of 18 some failures on their part it was not 19 issued for -- charges were not issued. 20 Q. Did you give a deposition in that 21 case? 22 A. I did. 23 Q. Is your deposition along the same</p>
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<p>1 lines as your expert report? 2 A. Yes, sir. 3 Q. Did the plaintiff pay for your 4 testimony? 5 A. Yes. 6 Q. Did you have contact with the 7 plaintiff's attorney in that case? 8 A. Yes. 9 Q. Do you remember who that attorney 10 was? 11 A. Yes, her name was Carla Mara. I 12 think it's M-a-r-a, Mara. 13 Q. Do you know who the defendant's 14 attorney was? 15 A. I do not. There were several. 16 There's a law firm downtown. I cannot 17 remember their law firm. 18 Q. Okay. Do you remember who Carla 19 worked for or what firm she was with? 20 A. She has her own firm. I don't 21 remember the attorney's name, but her last 22 name is Bus. 23 Q. Bus, B-u-s?</p>	<p>1 A. That was for -- B-u-s. That was 2 for the law firm for the school. 3 Q. Okay. Do you know what the 4 outcome of that case was? 5 A. I don't. 6 Q. And you don't know if it went to 7 trial or not? 8 A. I don't know. 9 Q. Since this is over Zoom, I'm going 10 to be offering a few documents, and I can 11 -- what I can do is I'm going to share 12 them on my screen. 13 Most of the time I can't fit the 14 full document on my screen, and I'll put 15 it up there and if you need me to scroll 16 down to review it, just let me know and 17 I'll be happy to do so. 18 A. Sure. 19 MS. BOLGER: And, Carl, you 20 should do that. You want to ask to look 21 at the whole the document. 22 Q. (By Mr. Ritchey) It's usually 23 easier in person, but we get to deal with</p>

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<p>1 the new world of Coronavirus and this is</p> <p>2 how we get to do it.</p> <p>3 A. Maybe things will open up here</p> <p>4 shortly.</p> <p>5 Q. I hope so.</p> <p>6 MS. BOLGER: This is the</p> <p>7 only time in my professional life I've</p> <p>8 attended so many depositions without my</p> <p>9 shoes on.</p> <p>10 Q. (By Mr. Ritchey) All right.</p> <p>11 Mr. Hershman, I'm showing you what's been</p> <p>12 produced to us as your CV and we'll mark</p> <p>13 this as Exhibit 117.</p> <p>14 (Whereupon, a document was marked</p> <p>15 as Plaintiff's Exhibit No. 117 and</p> <p>16 is attached to the original</p> <p>17 transcript.)</p> <p>18 Q. Do you need to review it further</p> <p>19 or are you okay?</p> <p>20 A. Oh, no, I'm sorry. I was waiting</p> <p>21 for you.</p> <p>22 Q. Okay. Just tell me when you're</p> <p>23 ready and I can scroll.</p>	<p>1 A. Yeah, I'm good. You can scroll.</p> <p>2 You can keep going. You can keep going.</p> <p>3 You can keep going.</p> <p>4 MS. BOLGER: Scotch, on this</p> <p>5 one if you have a particular page or</p> <p>6 question, I'm sure you can direct him to</p> <p>7 it because I'm sure he knows this one.</p> <p>8 MR. RITCHEY: I can do that,</p> <p>9 too.</p> <p>10 A. I'm familiar with the document.</p> <p>11 Q. Let me just ask you questions and</p> <p>12 I'll direct you kind of where it is in the</p> <p>13 document, if you're good with that.</p> <p>14 We'll go down to page 6 of</p> <p>15 Exhibit 117. And towards the bottom you</p> <p>16 have testified in San Diego County Court</p> <p>17 System as an expert in sex crimes</p> <p>18 investigations and victimology, slash,</p> <p>19 behavior evidence.</p> <p>20 Do you see where I am?</p> <p>21 A. Yes.</p> <p>22 Q. What is victimology, slash,</p> <p>23 behavior evidence?</p>
Page 31	Page 32
<p>1 A. So victimology is the study of</p> <p>2 victims, and in my case it's the study of</p> <p>3 victims of sexual assault.</p> <p>4 As to -- you know, which leads</p> <p>5 into behavioral evidence as to why victims</p> <p>6 do certain things, delayed report, maybe</p> <p>7 drive their -- drive the suspect to an ATM</p> <p>8 to get gas money, this is after their</p> <p>9 assault, maybe having prior sexual</p> <p>10 assaults with the same suspect but</p> <p>11 continue to see that person.</p> <p>12 And so I get called in, and also</p> <p>13 in my own case and in other cases where</p> <p>14 victims do odd things or do things that</p> <p>15 doesn't make sense to the rest of us who</p> <p>16 were not in that situation and who had not</p> <p>17 been a victim of a sexual assault.</p> <p>18 So I will testify to usually the</p> <p>19 delayed reporting is kind of a big thing</p> <p>20 and also why they would continually say</p> <p>21 have contact with somebody who sexually</p> <p>22 assaulted them.</p> <p>23 Q. Where did you learn, you know, the</p>	<p>1 aspects of victimology and behavior</p> <p>2 evidence?</p> <p>3 A. The fifth floor of the HQ</p> <p>4 downtown, sex crimes unit.</p> <p>5 Q. Okay. What do you mean by that?</p> <p>6 A. It's just my experience that I've</p> <p>7 had some training in it, but over a period</p> <p>8 of time I noticed -- my first few cases</p> <p>9 that I was assigned to it didn't make</p> <p>10 sense to me.</p> <p>11 But over a period of time, very</p> <p>12 short period of time, I noticed that all</p> <p>13 of these victims were doing the same</p> <p>14 things.</p> <p>15 It couldn't be a coincidence, so I</p> <p>16 knew there had to be something to it. So</p> <p>17 I just started digging into that and</p> <p>18 figured out what was going on as far as my</p> <p>19 victims.</p> <p>20 Q. What do you mean you dugged into</p> <p>21 it?</p> <p>22 A. I just started keeping track of</p> <p>23 how many victims delayed report, how many,</p>

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<p>1 you know, would tell me a couple of white</p> <p>2 lies, if you will, about how much maybe</p> <p>3 they had to drink or, you know, what drugs</p> <p>4 they did or didn't take.</p> <p>5 And I just kind of noticed this</p> <p>6 pattern of my victims basically telling me</p> <p>7 the same thing.</p> <p>8 Q. Okay.</p> <p>9 A. So I just kind of kept a running</p> <p>10 list of it.</p> <p>11 Q. And you said you did this while</p> <p>12 you were in the sex crimes unit at San</p> <p>13 Diego Police Department?</p> <p>14 A. Yes, I did.</p> <p>15 Q. Did anyone tell you to do this?</p> <p>16 A. No.</p> <p>17 Q. Were you trained in any way to</p> <p>18 keep track of these types of things you</p> <p>19 saw with victims?</p> <p>20 A. No.</p> <p>21 Q. Did you receive any training in</p> <p>22 victimology or behavior evidence while you</p> <p>23 were in the sex crimes unit?</p>	<p>1 A. No, just by experience. I end up</p> <p>2 now I train on it. Now I instruct, so I</p> <p>3 teach the same subject.</p> <p>4 Q. So just based on your on-the-job</p> <p>5 experience and training, that's where you</p> <p>6 learned how to do this type of victimology</p> <p>7 and behavior evidence tracking; is that</p> <p>8 right?</p> <p>9 A. That is correct.</p> <p>10 Q. And this line of your CV are these</p> <p>11 all criminal cases you're referring to or</p> <p>12 are there civil cases as well?</p> <p>13 A. The majority of those were</p> <p>14 criminal cases. I think I list one on my</p> <p>15 report where I in the last four years</p> <p>16 testified in courts that a case that was</p> <p>17 not mine and that was for the city</p> <p>18 attorney's office.</p> <p>19 Q. Was that a criminal investigation</p> <p>20 case?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Have we talked about all the cases</p> <p>23 which you've given expert opinion in civil</p>
Page 35	Page 36
<p>1 cases?</p> <p>2 A. Civil cases? No, there's one</p> <p>3 other that's also in my report.</p> <p>4 I testified in a hearing with a</p> <p>5 judge that was a police officer here in</p> <p>6 San Diego who was a sheriff deputy, and he</p> <p>7 was groping women during his regular</p> <p>8 calls.</p> <p>9 And we ended up with I think 23</p> <p>10 victims altogether. 21 of them I spoke to</p> <p>11 and took their statements. That was a</p> <p>12 civil case. That was a hearing also on</p> <p>13 the victimology and the delayed reporting.</p> <p>14 Q. Is your knowledge of victimology</p> <p>15 and behavior evidence based on any</p> <p>16 scientific studies or research?</p> <p>17 A. Well, that of my own, and also now</p> <p>18 that, you know, years later I noticed that</p> <p>19 other people were, you know, talking about</p> <p>20 it, they may have been talking about it</p> <p>21 prior to that, but now there's other</p> <p>22 studies and research out there.</p> <p>23 Q. Okay. Did you have any -- what</p>	<p>1 kind of research did you conduct on these</p> <p>2 topics or subjects?</p> <p>3 A. Just comparing one victim to</p> <p>4 another in my caseload --</p> <p>5 Q. Was any of this research -- I'm</p> <p>6 sorry, go ahead.</p> <p>7 A. I was just going to say that's</p> <p>8 about it. I just -- I mean there's</p> <p>9 nothing fancy, but I just kind of kept a</p> <p>10 running tab of how many delayed and the</p> <p>11 length of the delay and what type of</p> <p>12 sexual assault that it was. Kind of the</p> <p>13 simple stuff.</p> <p>14 Q. Was any of your research</p> <p>15 peer-reviewed or published?</p> <p>16 A. No, it was not published or</p> <p>17 peer-reviewed. I was a keynote speaker on</p> <p>18 this same subject back in 2015 -- it was</p> <p>19 either 20 -- maybe it was 2016 down in</p> <p>20 Orlando, Florida.</p> <p>21 Q. Okay. Do you know who came up</p> <p>22 with the term victimology?</p> <p>23 MS. BOLGER: I'm just going</p>

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<p>1 to object. You're welcome to conduct your 2 deposition however you want, but we're not 3 offering Mr. Hershman as an expert on 4 victimology or behavior evidence, so this 5 is totally irrelevant to the purpose he's 6 here for today.</p> <p>7 So I guess you can ask the 8 questions, but I just want you to know 9 this has nothing to do with the price of 10 tea in China, but you can ask what you 11 want; you're just wasting time.</p> <p>12 Carl, you can answer.</p> <p>13 A. The term victimology has been 14 around a long time. I think back in the 15 '50s and '60s it was the coined around 16 that timeframe, if I remember right.</p> <p>17 Q. (By Mr. Ritchey) Okay. What about 18 behavior evidence?</p> <p>19 MS. BOLGER: Same objection.</p> <p>20 A. That term has been around not as 21 long, but I did not coin it.</p> <p>22 I've read it somewhere, why 23 certain people don't call 911 after</p>	<p>1 they've been shot or raped. And I believe 2 it was in an article, if I remember right, 3 but it's been so long I can't remember.</p> <p>4 Q. All right. On page 2 through 6 of 5 your CV you've listed all of your 6 instructor courses; is that correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Did you ever instruct any of these 9 courses in Alabama?</p> <p>10 A. I don't think so. The closest I 11 got was Louisiana.</p> <p>12 Q. All right. On page 3 in September 13 of 2004 looks like you taught a course at 14 San Diego State University entitled Rape 15 by Intoxication.</p> <p>16 Am I understanding that correctly?</p> <p>17 A. Yes.</p> <p>18 Q. What was taught in that course?</p> <p>19 A. So the frat matters -- frat 20 manners, I'm sorry, came out of an 21 incident, a couple of incidents of rape by 22 intoxication.</p> <p>23 And the school was going through</p>
Page 39	Page 40
<p>1 hearings to have some of these chapters to 2 be punished.</p> <p>3 And I'm not a college person, so I 4 don't know how it works, but they were 5 going to be punished and maybe even lose 6 their charter.</p> <p>7 And the school reached out to our 8 unit, being the sex crimes unit, and asked 9 us to come in and do some training as to 10 preventative -- to prevent sexual assault 11 by intoxication.</p> <p>12 So myself and another person from 13 the office went in and taught that class. 14 It was, I don't know, about an hour and a 15 half.</p> <p>16 We went over it along with these 17 frat guys, and I think part of their, you 18 know, punishment if you will is that they 19 had to do all these things to keep their 20 charter and one of them was to sit through 21 my training.</p> <p>22 Q. Okay. Was this just one 23 fraternity you taught this to?</p>	<p>1 A. Well, no. There were several 2 fraternities that were in this group that 3 was, for lack of a better word, in trouble 4 and they -- they had to come -- I think I 5 was in the cafeteria, if you will, and a 6 bunch of them came in to this hall or a 7 cafeteria where chairs were set up.</p> <p>8 And I would say it was probably a 9 couple hundred people there, and it was 10 just for the frat -- frat guys.</p> <p>11 Q. Okay. And you said you taught 12 them the law, I can't remember exactly how 13 you said it, but talked about the law 14 about sexual assault or something like 15 that? Correct me if I'm wrong.</p> <p>16 MS. BOLGER: Object to the 17 form. I'm not sure what the question is.</p> <p>18 So, Carl, if you understand, you 19 can answer, but if you don't, just ask 20 Scotch to rephrase it.</p> <p>21 A. I understand it.</p> <p>22 So we wanted them to understand 23 what consent was and what the law says</p>

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<p>1 stating that you cannot have sexual</p> <p>2 contact with somebody who is severely</p> <p>3 intoxicated or passed out and also under</p> <p>4 age and females and such, so that's what I</p> <p>5 meant by the law; what the penal code</p> <p>6 says.</p> <p>7 Q. (By Mr. Ritchey) And is that</p> <p>8 California law?</p> <p>9 A. Yes, sir.</p> <p>10 MS. BOLGER: At that seminar</p> <p>11 in 2004 in San Diego; is that the</p> <p>12 question, Scotch?</p> <p>13 MR. RITCHEY: Right.</p> <p>14 Q. Is that right, Mr. Hershman?</p> <p>15 A. Yes, yes.</p> <p>16 Q. On the same page 3, looks like in</p> <p>17 March of 2009, you taught a course I guess</p> <p>18 to the National Sexual Assault Institute</p> <p>19 called Pursuing Justice Through Civil</p> <p>20 Legal Remedies, Sexual Assault by</p> <p>21 Intoxication, Credibility, and Consent.</p> <p>22 Do you see where I am?</p> <p>23 A. Yes.</p>	<p>1 Q. What was that course about?</p> <p>2 A. Again, that was about sexual</p> <p>3 assault, credibility and consent.</p> <p>4 So the credibility portion of it</p> <p>5 -- consent portion of it is obvious. The</p> <p>6 credibility issue of it was that a lot of</p> <p>7 victims of sexual assaults are incorrectly</p> <p>8 judged on their credibility because they</p> <p>9 have done something before, during, or</p> <p>10 after their assault that a lot of people</p> <p>11 wouldn't agree with or even criminal. So</p> <p>12 that was that portion of it.</p> <p>13 The civil remedies was a very</p> <p>14 short talk on if the case is not adju --</p> <p>15 well, it's adjudicated, but it does not go</p> <p>16 and have charges issued; in other words,</p> <p>17 it's a closed case, that your case could</p> <p>18 go through the civil arena, and if that</p> <p>19 happens, how would that work.</p> <p>20 Q. Was this also based off California</p> <p>21 law, this course?</p> <p>22 A. I'm sorry, say that again.</p> <p>23 Q. Was this course also based off of</p>
Page 43	Page 44
<p>1 California law?</p> <p>2 A. Yes, the consent portion of it</p> <p>3 was, yes.</p> <p>4 Q. Okay. What other law was it based</p> <p>5 off of?</p> <p>6 MS. BOLGER: Sorry, we're</p> <p>7 talking about this specific class 12 years</p> <p>8 ago?</p> <p>9 MR. RITCHEY: Right.</p> <p>10 A. Yeah, I'm sorry, it wasn't a</p> <p>11 course just about law. It was more about</p> <p>12 what you could do -- what happens when</p> <p>13 your case, you know, if a civil attorney</p> <p>14 contacts you.</p> <p>15 I think I had half the room saying</p> <p>16 they're not allowed to have any, you know,</p> <p>17 I wouldn't give them anything, you know,</p> <p>18 that type of thing.</p> <p>19 In that class the consent portion</p> <p>20 of it, the law was just it was stated. It</p> <p>21 wasn't a deep dig into what our consent</p> <p>22 law is.</p> <p>23 And the credibility is just what</p>	<p>1 investigators usually, you know, screw up</p> <p>2 on as far as they misjudge a victim</p> <p>3 because of their -- because of their, you</p> <p>4 know, behavioral -- you know, because of</p> <p>5 their behavior.</p> <p>6 Q. Okay. In April of 2009, looks</p> <p>7 like you taught a course to End Violence</p> <p>8 Against Women International entitled</p> <p>9 Investigating Difficult Sexual Assault</p> <p>10 Cases.</p> <p>11 What was that about?</p> <p>12 A. Investigating difficult sexual</p> <p>13 assault cases.</p> <p>14 It's about, you know, approaching</p> <p>15 cases that involve a victim who was</p> <p>16 severely intoxicated and they have memory</p> <p>17 loss or refractive memory or no memory at</p> <p>18 all of what had occurred to her or him.</p> <p>19 How to go through the</p> <p>20 investigation from start to finish.</p> <p>21 That's about it.</p> <p>22 Q. Did you come up with the procedure</p> <p>23 of how to go through an investigation</p>

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<p>1 start to finish that you taught in this</p> <p>2 course?</p> <p>3 MS. BOLGER: Object to the</p> <p>4 form. I don't remember him talking about</p> <p>5 creating a procedure.</p> <p>6 But I guess, Carl, if you</p> <p>7 can answer that question, if it's clear,</p> <p>8 you can answer it.</p> <p>9 A. The procedure itself there was</p> <p>10 some things that I guess I came up with</p> <p>11 but majority of it I was taught.</p> <p>12 Q. (By Mr. Ritchey) How were you</p> <p>13 taught those procedures?</p> <p>14 A. My sergeant at the time which</p> <p>15 ended up later becoming the founder of End</p> <p>16 Violence Against Women, she's a very</p> <p>17 notable -- noted person internationally on</p> <p>18 this topic.</p> <p>19 Q. What's her name?</p> <p>20 A. Joanne Archambault.</p> <p>21 Q. Can you spell last name?</p> <p>22 A. Boy, I cannot.</p> <p>23 Q. Okay. That's all right.</p>	<p>1 A. If you Google Joanne Archambault,</p> <p>2 or End Violence Against Women, her name</p> <p>3 comes up.</p> <p>4 Q. Okay.</p> <p>5 A. Don't tell her I couldn't spell</p> <p>6 her name though.</p> <p>7 Q. I won't, I promise.</p> <p>8 A. I only worked for her for five</p> <p>9 years.</p> <p>10 Q. Are all sexual assault cases</p> <p>11 difficult to investigate?</p> <p>12 A. Yes.</p> <p>13 Q. And how so?</p> <p>14 A. Well, the number one thing that's</p> <p>15 difficult is the consent hurdle. It's the</p> <p>16 number one defense in most sexual</p> <p>17 assaults, but all sexual assaults there is</p> <p>18 a component of consent statute.</p> <p>19 Q. What do you mean by the consent</p> <p>20 hurdle?</p> <p>21 MS. BOLGER: Object to the</p> <p>22 form.</p> <p>23 A. This is the only crime where</p>
Page 47	Page 48
<p>1 consent is actually a defense. You know,</p> <p>2 you come home and your television is gone,</p> <p>3 somebody broke in your house and stole</p> <p>4 your car, there's not a -- you don't have</p> <p>5 to worry about consent or any other</p> <p>6 crimes.</p> <p>7 This is the only crime where</p> <p>8 consent is actually written into the law.</p> <p>9 And it is a defense.</p> <p>10 And, you know, when you have two</p> <p>11 people in a room and they're by</p> <p>12 themselves, that hurdle can be high. So</p> <p>13 some consent cases are easier than others</p> <p>14 but most of them are difficult.</p> <p>15 Q. I'm going to move on to page 4.</p> <p>16 In April of 2011 you taught National</p> <p>17 District Attorney's Association. One of</p> <p>18 the names of the courses was called</p> <p>19 Pretext Phone Calls and non-Mirandized</p> <p>20 Confessions.</p> <p>21 Will you just tell me what that</p> <p>22 was about please?</p> <p>23 MS. BOLGER: You mean other</p>	<p>1 than pretext phone calls and</p> <p>2 non-Mirandized confessions?</p> <p>3 MR. RITCHEY: Well, I kind</p> <p>4 of want to get into, you know, what they</p> <p>5 are and what is and what was actually</p> <p>6 taught during the course.</p> <p>7 A. So pretext phone calls is -- what</p> <p>8 that is it's a controlled phone call</p> <p>9 between two people, usually your victim</p> <p>10 and the suspect, but it could be your</p> <p>11 victim or anybody else as to -- it's a</p> <p>12 controlled phone call that's recorded and</p> <p>13 can be used in criminal court.</p> <p>14 And this phone call is, you know,</p> <p>15 it will get information as to what</p> <p>16 happened. Also, possibility -- there's a</p> <p>17 possibility that the suspect would make</p> <p>18 incriminating statements.</p> <p>19 There's a wealth of information</p> <p>20 that comes from these phone calls that</p> <p>21 kind of fills in the blanks, if you will,</p> <p>22 where, you know, your victim is blacked</p> <p>23 out or passed out and does not know, you</p>

<p style="text-align: right;">Page 49</p> <p>1 know, what happened.</p> <p>2 You also can come across other</p> <p>3 evidence that might be talked about in the</p> <p>4 case. Maybe you have a crime scene such</p> <p>5 as don't you remember, you know, we had</p> <p>6 sex in my car and she didn't know that, so</p> <p>7 now you have a crime scene.</p> <p>8 You could come across or identify</p> <p>9 other witnesses, maybe other victims or</p> <p>10 even other suspects in those phone calls.</p> <p>11 So that training was how to conduct a</p> <p>12 pretext phone call.</p> <p>13 Q. Okay. When did you learn about</p> <p>14 pretext phone calls?</p> <p>15 A. The first week I was in the unit.</p> <p>16 These phone calls are used constantly.</p> <p>17 Q. Was there a specific -- I'm sorry,</p> <p>18 go ahead.</p> <p>19 A. I was just going to say there's a</p> <p>20 lot of cases that you would want to</p> <p>21 conduct a pretext phone call in.</p> <p>22 Q. What are those cases?</p> <p>23 A. Well, the majority of them are</p>	<p style="text-align: right;">Page 50</p> <p>1 cases where there's consent issue and</p> <p>2 there is no evidence, physical -- say</p> <p>3 physical evidence or scientific evidence.</p> <p>4 There may be only, you know, what</p> <p>5 most people or a lot of people call he</p> <p>6 said/she said cases; those type.</p> <p>7 Q. And you said you learned of these</p> <p>8 types of phone calls in the first week in</p> <p>9 the unit. What unit was that?</p> <p>10 A. The sex crimes unit. We also used</p> <p>11 them in the homicide unit, too.</p> <p>12 Q. Did you receive a training course</p> <p>13 in those pretext phone calls?</p> <p>14 A. No, I did not.</p> <p>15 Q. Who taught you about pretext phone</p> <p>16 calls?</p> <p>17 A. It was another detective within</p> <p>18 the unit. I don't remember which one.</p> <p>19 Q. So would that be on-the-job</p> <p>20 training?</p> <p>21 A. Yes, sir.</p> <p>22 Q. On page five, let me try to find</p> <p>23 it. I'm sorry, this one is on page 26,</p>
<p style="text-align: right;">Page 51</p> <p>1 May 29, 2019, looks like you taught RISE,</p> <p>2 one of the courses was entitled</p> <p>3 Trauma-Informed Responses to Sexual</p> <p>4 Assault.</p> <p>5 MS. BOLGER: Sorry, let me</p> <p>6 just catch up before you ask a question.</p> <p>7 I've lost you. Where are you?</p> <p>8 MR. RITCHEY: This is going</p> <p>9 to be page 6 --</p> <p>10 MS. BOLGER: May 29th, I got</p> <p>11 you. Sorry.</p> <p>12 Q. (By Mr. Ritchey) Do you see where</p> <p>13 we are, Mr. Hershman?</p> <p>14 A. I do.</p> <p>15 MS. BOLGER: Sorry, Scotch.</p> <p>16 Q. (By Mr. Ritchey) It's all right.</p> <p>17 What are trauma-informed responses</p> <p>18 to a sexual assault or what was that</p> <p>19 course about?</p> <p>20 A. Yes, that was actually somebody</p> <p>21 that I had co-presented with. That</p> <p>22 training was when you respond to someone</p> <p>23 who has just been through a traumatic</p>	<p style="text-align: right;">Page 52</p> <p>1 incident or even witnessed one, how you</p> <p>2 would approach that person and there's</p> <p>3 several different things that an</p> <p>4 investigator should do when approaching</p> <p>5 that person and that's what that was</p> <p>6 about.</p> <p>7 Q. What are those several different</p> <p>8 things?</p> <p>9 A. The one that's most important is</p> <p>10 to understand and to recognize that they</p> <p>11 have suffered trauma and to, you know,</p> <p>12 conduct your business, you know, slowly,</p> <p>13 give them time to understand what is --</p> <p>14 has occurred to them.</p> <p>15 Now, depending when this interview</p> <p>16 takes place, if it takes place in close</p> <p>17 proximity of the actual crime, then this</p> <p>18 person you could get, you know, some</p> <p>19 information from them if you need to, but</p> <p>20 mainly they need to be -- they need to</p> <p>21 have sleep.</p> <p>22 They need to have food. They need</p> <p>23 to kind of de-cell if you will. There's</p>

<p style="text-align: right;">Page 53</p> <p>1 this myth that, you know, the fresher the 2 crime, the closer to reporting that that's 3 -- you're going to get your best 4 information, but that's not actually how 5 it works with somebody that's been a 6 victim of, you know, a trauma. 7 You have to also understand that 8 they may say things that are not complete 9 or sometimes even untrue or inconsistent 10 as to what they had seen or, you know, 11 they had participated in and it's 12 basically just how the brain works, that 13 during trauma it only receives some 14 information and that information will be 15 broken up. 16 So you have to understand that 17 they cannot tell you in chronological 18 order what happened to them. They may, 19 for example, say he put his finger inside 20 my vagina but they don't know which hand 21 or which finger. 22 So in that teaching, you know, for 23 law enforcement is that talking with</p>	<p style="text-align: right;">Page 54</p> <p>1 somebody or interviewing somebody who has 2 suffered from trauma is not like talking 3 to somebody who, you know, walked out and 4 their car was gone, not to use the old 5 standard way of interviewing someone. 6 Q. Did you develop this concept of 7 trauma-informed responses? 8 A. I did not. 9 MS. BOLGER: Object to the 10 form. You mean did he create it? Is that 11 what you mean? 12 MR. RITCHEY: Right. 13 A. I did not. 14 Q. Where did you learn about 15 trauma-informed responses? 16 A. I learned that from Russell 17 Strand. He came up with that concept. He 18 now teaches all over the world. 19 I know him personally. I've met 20 him at several conferences. At one point 21 he was one of our -- one of End Violence 22 Against Women's experts. 23 Q. So when you said you learned it</p>
<p style="text-align: right;">Page 55</p> <p>1 from Russell Strand were these conferences 2 he taught and what form was it? 3 A. Yes, it was a training that he put 4 on that I sat in on. 5 I mean I knew of some level of, 6 you know, interviewing somebody with 7 trauma, but I never had formal training in 8 it and so I sat through his training. 9 Q. When did you receive that formal 10 training? 11 A. I want to say maybe it was 12 Chicago, maybe it was Chicago 2018. I 13 can't remember exactly. 14 Q. Were you employed by any law 15 enforcement agency at that time? 16 A. No, I retired in 2017. 17 Q. Was there any reason you attended 18 that formal training session? 19 A. I was there to present myself. I 20 was there to also speak. 21 Q. Do you know when this concept was 22 developed? 23 A. For Russell Strand I don't know.</p>	<p style="text-align: right;">Page 56</p> <p>1 I know that I was taught this type of 2 interviewing I would say 2002, maybe 2001. 3 Q. Who were you taught by? 4 A. Joanne Archambault. 5 Q. And was this while you were at the 6 San Diego Police Department? 7 A. Yes, sir. 8 Q. Were you sent to any formal 9 training on trauma-informed responses by 10 San Diego Police Department? 11 A. No. 12 Q. Other than the Russell Strand 13 training, did you attend any other 14 training on trauma-informed responses? 15 MS. BOLGER: Object to the 16 form. 17 You can answer. 18 A. No. 19 Q. (By Mr. Ritchey) Were you paid for 20 all the courses you taught that are listed 21 on your CV? 22 A. No. 23 Q. Do you know about how many you</p>

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<p>1 were paid for? Was it a majority?</p> <p>2 MS. BOLGER: I'm going to</p> <p>3 object and just say I don't understand the</p> <p>4 question.</p> <p>5 Carl, if you understand the</p> <p>6 question, but I don't know what you mean</p> <p>7 by paid for. You mean paid for the course</p> <p>8 or paid for in salary?</p> <p>9 I legitimately don't</p> <p>10 understand the question and ask you to</p> <p>11 rephrase it so I can.</p> <p>12 Q. (By Mr. Ritchey) Mr. Hershman, did</p> <p>13 you receive compensation for teaching any</p> <p>14 of these courses on your CV?</p> <p>15 A. Nothing before 2017.</p> <p>16 Q. And what about after 2017?</p> <p>17 A. Everything except for the</p> <p>18 conferences I was -- let's see here. Can</p> <p>19 you -- I don't have control.</p> <p>20 Can you go up to the next page to</p> <p>21 2017?</p> <p>22 Q. Yes. So April 16th, May 29th and</p> <p>23 April 18th I was not paid for. April 5th</p>	<p>1 I was not paid for. April 17th I was not</p> <p>2 paid for.</p> <p>3 June 26th I was not paid for, I</p> <p>4 wasn't paid. September 6th I was not</p> <p>5 paid. October 15th I was paid for.</p> <p>6 MS. BOLGER: You have to be</p> <p>7 paid to go to Albany.</p> <p>8 A. Okay. Let's see here, and then</p> <p>9 January 20, 2019, I was paid for that.</p> <p>10 And then the May 6, 2019, International</p> <p>11 Association Chiefs of Police I was paid</p> <p>12 for that.</p> <p>13 May 22nd Louisiana Department of</p> <p>14 Justice I was paid for that. May 29,</p> <p>15 2019, I was not paid for that. June 10,</p> <p>16 2019, I was not paid for that.</p> <p>17 June 19th -- I'm sorry, June 10th</p> <p>18 I was not paid for that. June 19th I was</p> <p>19 paid for that for the South Dakota.</p> <p>20 And let's see, September 10th,</p> <p>21 11th and 12th Nampa Police Department or</p> <p>22 Nampa, Idaho I was paid for that.</p> <p>23 And can you scroll up? And let's</p>
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<p>1 see here, September 29th, 2019, I was paid</p> <p>2 for that. October 23rd, 2019, the Union</p> <p>3 County, Ohio I was paid for that.</p> <p>4 And then the February 3rd and 7th,</p> <p>5 2020 those are the classes that the state</p> <p>6 of California puts on. I teach in those</p> <p>7 every other month, and I do get paid for</p> <p>8 those.</p> <p>9 Q. (By Mr. Ritchey) Do you have an</p> <p>10 opinion as to whether actions or inactions</p> <p>11 by law enforcement officers are influenced</p> <p>12 by the training they receive?</p> <p>13 MS. BOLGER: I'm sorry,</p> <p>14 could you do that again? You were cut off</p> <p>15 in the middle.</p> <p>16 MR. RITCHEY: Do you mind</p> <p>17 reading that?</p> <p>18 (Whereupon, requested portion was</p> <p>19 read back by court reporter.)</p> <p>20 MS. BOLGER: That's a very</p> <p>21 broad question.</p> <p>22 Carl, if you can answer it,</p> <p>23 you can answer it.</p>	<p>1 A. It can be.</p> <p>2 Q. (By Mr. Ritchey) How so?</p> <p>3 A. How so? Is that what you're</p> <p>4 asking me?</p> <p>5 Q. Yes.</p> <p>6 MS. BOLGER: Just in general</p> <p>7 in the universe? That's just generally</p> <p>8 every law enforcement person all of their</p> <p>9 training forever; is that the question?</p> <p>10 MR. RITCHEY: I'm just</p> <p>11 asking what I'm asking.</p> <p>12 MS. BOLGER: And I'm getting</p> <p>13 clarification.</p> <p>14 So, Carl, if you think you</p> <p>15 can answer it, go ahead.</p> <p>16 A. Lack of training if there's</p> <p>17 something that you are doing that you</p> <p>18 shouldn't be doing in a case, and that</p> <p>19 could be from patrol or investigations or</p> <p>20 even management, that could have an impact</p> <p>21 on the case.</p> <p>22 Q. (By Mr. Ritchey) Have you reviewed</p> <p>23 any documents in preparation for this</p>

15 (Pages 57 to 60)

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<p>1 deposition?</p> <p>2 A. Yes.</p> <p>3 Q. Which documents are those?</p> <p>4 A. My report --</p> <p>5 MS. BOLGER: Just for the</p> <p>6 record, of course, Scotch, you have a full</p> <p>7 list of everything that the witness has.</p> <p>8 A. I reviewed my own reports and</p> <p>9 everything that I listed in that report.</p> <p>10 Depositions also of people that were</p> <p>11 involved.</p> <p>12 Q. (By Mr. Ritchey) Anything else?</p> <p>13 A. The standing operating procedures</p> <p>14 of the Tuscaloosa Police Department.</p> <p>15 Q. Is that it?</p> <p>16 A. I think so. Everything that I</p> <p>17 didn't list is actually in my report but I</p> <p>18 think that's it. There could be one or</p> <p>19 two out there that I'm not aware of, that</p> <p>20 I can't remember.</p> <p>21 Q. Do you have any adult children or</p> <p>22 adult relatives that live in the state of</p> <p>23 Alabama?</p>	<p>1 A. Not that I'm aware of.</p> <p>2 Q. Have you conducted any business or</p> <p>3 consultations in Alabama?</p> <p>4 A. No.</p> <p>5 Q. Have you ever been arrested or</p> <p>6 charged with a crime?</p> <p>7 A. No. No.</p> <p>8 Q. I can bring this back up if you</p> <p>9 need me to, but is all your employment</p> <p>10 history listed on your CV, which is</p> <p>11 Exhibit 117?</p> <p>12 A. Yes, anything other than working</p> <p>13 at a grocery store at 15 years old I</p> <p>14 think, yeah.</p> <p>15 Q. That's fair enough.</p> <p>16 And it looks like all your law</p> <p>17 enforcement career was with the San Diego</p> <p>18 Police Department; is that right?</p> <p>19 A. That's correct.</p> <p>20 Q. Were you subject to any</p> <p>21 disciplinary actions while there?</p> <p>22 A. No, I was not.</p> <p>23 Q. What was the highest rank you</p>
Page 63	Page 64
<p>1 achieved in the San Diego Police</p> <p>2 Department?</p> <p>3 A. Detective.</p> <p>4 Q. And it looks like you were part of</p> <p>5 the sex crimes unit during two stints with</p> <p>6 the department; is that right?</p> <p>7 A. That is correct.</p> <p>8 Q. Did you investigate any other sex</p> <p>9 crimes in any of the other departments</p> <p>10 that you were involved in?</p> <p>11 A. Yes, I did.</p> <p>12 Q. Okay. Which departments would</p> <p>13 those be?</p> <p>14 A. That would be the elder abuse</p> <p>15 unit. So if the victim was 65 years and</p> <p>16 older, I investigated all those sex crimes</p> <p>17 that would come into the elder abuse unit.</p> <p>18 When I worked in our cyber unit I</p> <p>19 got all the cybersex crimes such as penis</p> <p>20 pics and revenge pornography. I did</p> <p>21 investigate a lot of the revenge</p> <p>22 pornography cases that came in.</p> <p>23 Q. When you were with the San Diego</p>	<p>1 Police Department did you seek out</p> <p>2 training voluntarily or were you ordered</p> <p>3 by your superiors to attend training?</p> <p>4 MS. BOLGER: Object to the</p> <p>5 form. All training ever?</p> <p>6 Carl, you can answer if you</p> <p>7 can do it.</p> <p>8 A. No, I would seek out training on</p> <p>9 my own. There's only one class that was</p> <p>10 mandatory and that was our POST, which is</p> <p>11 a Police Officer Standards and Training</p> <p>12 stated you have to have 40 hours of sex</p> <p>13 crimes training, which California</p> <p>14 Department of Justice would put on, which</p> <p>15 that's what I teach now in that aspect.</p> <p>16 But if you went to homicide, my</p> <p>17 homicide course was 40 hours and child</p> <p>18 abuse was also 40 hours.</p> <p>19 Q. (By Mr. Ritchey) Okay.</p> <p>20 A. All the other training I sought</p> <p>21 out on my own.</p> <p>22 Q. Okay. How did you seek it out?</p> <p>23 A. Well, most of it was when I was</p>

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<p>1 speaking I would go to, you know, a one,</p> <p>2 two or three-day conference and upon</p> <p>3 speaking, once you were done with your</p> <p>4 presentation you could go and sit in on</p> <p>5 other classes and that's what did. That</p> <p>6 was the majority of my training.</p> <p>7 Q. Okay. So you were just</p> <p>8 participating when everyone else was</p> <p>9 talking in those conferences?</p> <p>10 MS. BOLGER: Object to the</p> <p>11 form.</p> <p>12 A. I didn't understand the question.</p> <p>13 I'm sorry.</p> <p>14 Q. (By Mr. Ritchey) So when you went</p> <p>15 to the conferences you were speaking on,</p> <p>16 you just stayed and listened to what other</p> <p>17 speakers had to say?</p> <p>18 A. Yes, that was the majority of my</p> <p>19 training. I also went to there's a</p> <p>20 company that puts on training and they</p> <p>21 still do to this day in Las Vegas, and I</p> <p>22 paid to go there.</p> <p>23 Some homicide training I took</p>	<p>1 there. I took their sex course, sex</p> <p>2 crimes course, and that's a whole week</p> <p>3 course. I put in for that and my</p> <p>4 department paid for it.</p> <p>5 The homicide -- I'm sorry, the</p> <p>6 homicide course they paid for. The sex</p> <p>7 crimes course I paid out of my own pocket.</p> <p>8 Q. What's that company called?</p> <p>9 A. I don't know. Again, if you</p> <p>10 Google it, it will come up. If you put in</p> <p>11 -- it's -- I can't remember, something law</p> <p>12 enforcement.</p> <p>13 I'm sorry, I just -- I just can't</p> <p>14 remember. But if you were to Google law</p> <p>15 enforcement training in Las Vegas, it will</p> <p>16 come up. I think that's how I searched</p> <p>17 it.</p> <p>18 Q. Okay. And the sex crimes course</p> <p>19 that you attended what was the reason</p> <p>20 behind attending that one?</p> <p>21 A. I was in Las Vegas, I mean.</p> <p>22 Q. I hear you.</p> <p>23 A. No, there was good training there.</p>
Page 67	Page 68
<p>1 Even though I speak, you know, I speak on</p> <p>2 sex crimes, things new come up, you know,</p> <p>3 so I like to stay on top of things and</p> <p>4 sometimes new things come up and, yeah, I</p> <p>5 just like to stay current.</p> <p>6 Q. Did you use it to assist you in</p> <p>7 your speaking engagements?</p> <p>8 A. I can't remember. I may have</p> <p>9 learned something new and used it, but</p> <p>10 that wasn't the purpose for going.</p> <p>11 Q. What was the purpose?</p> <p>12 A. Just to see if anything new, you</p> <p>13 know, what other people were talking about</p> <p>14 as far as the training. I mean I was</p> <p>15 there for the training to help me in my</p> <p>16 investigations.</p> <p>17 Q. When did you attend the sex crimes</p> <p>18 course in Las Vegas?</p> <p>19 A. That was -- I want to say 2003,</p> <p>20 but I'm not 100 percent sure. I think it</p> <p>21 was 2003.</p> <p>22 Q. Okay. And what about the homicide</p> <p>23 course with the Las Vegas company?</p>	<p>1 A. I believe that was 2004.</p> <p>2 Q. Have any of the cases that you</p> <p>3 worked with the San Diego Police</p> <p>4 Department been investigated internally by</p> <p>5 the San Diego Police Department?</p> <p>6 MS. BOLGER: Sorry, can you</p> <p>7 ask that again? I just didn't understand</p> <p>8 it.</p> <p>9 MR. RITCHEY: Can you read</p> <p>10 that back?</p> <p>11 (Whereupon, requested portion was</p> <p>12 read back by court reporter.)</p> <p>13 A. I don't think so. There were a</p> <p>14 couple of police officer cases that I</p> <p>15 investigated that internal affairs looked</p> <p>16 at, but I don't -- I mean that was the</p> <p>17 standard thing that they would do.</p> <p>18 Does that make sense? Does that</p> <p>19 answer make sense?</p> <p>20 Q. What do you mean it was the</p> <p>21 standard thing they would do?</p> <p>22 A. Well, any time a police officer is</p> <p>23 accused of something, it goes to internal</p>

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<p>1 affairs. They don't -- the way San Diego 2 Police Department works is if an officer 3 is accused of a crime, depending on that 4 crime, the unit, say a child molester or 5 sex crimes or elder abuse, whatever the -- 6 you know, the complaint comes in or the 7 possibility that a police officer 8 committed a crime, that specialty unit 9 will investigate it and then turn it over 10 to internal affairs. 11 Q. Okay. Were you ever the subject 12 of any investigation like the ones you 13 just explained? 14 A. No. 15 Q. For any of the cases that you 16 worked for at the San Diego Police 17 Department did an entity or agency outside 18 the San Diego Police Department 19 investigate in any of those cases? 20 MS. BOLGER: Object to the 21 form. 22 You can answer if you 23 understand it.</p>	<p>1 A. Talking about the police officer 2 cases? 3 Q. (By Mr. Ritchey) Just any case you 4 investigated or you were the subject of 5 the investigation. 6 A. That -- 7 MS. BOLGER: I didn't 8 understand that question. Can you 9 rephrase that last question? I didn't 10 understand it. 11 Q. (By Mr. Ritchey) Basically, have 12 you worked on any cases that have been 13 investigated by some agency or entity 14 outside of the San Diego Police 15 Department? 16 A. Have I investigated any cases that 17 was investigated by another entity outside 18 -- 19 Q. Right. 20 A. -- of the police department? No. 21 Q. Within the San Diego Police 22 Department who generally set the training 23 policies or ordered training?</p>
Page 71	Page 72
<p>1 A. Well, all that stuff is set 2 through our academy classes. So whoever 3 at the time is the captain up there. 4 I believe it actually falls on the 5 lieutenant but they set the training 6 standards for -- we have a regional 7 academy, so where we mix our sheriffs and 8 all the other agencies together. 9 Q. While you were at the San Diego 10 Police Department were you ordered to go 11 into any other training other than the 12 regional academy? 13 MS. BOLGER: Object to the 14 form. That's asked and answered, but you 15 can answer. 16 A. No. 17 Q. (By Mr. Ritchey) Did you have a 18 mandatory amount of hours you had to 19 complete in training for each year? 20 MS. BOLGER: Object to the 21 form. Asked and answered. 22 You can answer. 23 A. Every 18 months we have what we</p>	<p>1 call Regional Officer Training, and it's 2 every 18 months, that's where they'll put 3 on classes. 4 We get our CPR card updated. We 5 have our driving that -- a day of driving 6 that we do night shoots down at the range. 7 All those perishable skills they redo 8 those every 18 months. 9 And then they have a day or 10 sometimes a day and a half we'll go do 11 classes on domestic violence or sex 12 crimes, it just depends. 13 Every 18 months it changes, and it 14 could be just officer professionalism. 15 The classes are just kind of random, so 16 that's the only training that they really 17 -- that we have to do. 18 Q. And does the San Diego Police 19 Department require more than just that 20 every 18-month regional officer training? 21 MS. BOLGER: Object to the 22 form. I thought he answered that already, 23 but go ahead.</p>

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<p>1 A. Yeah, that's the required 2 training, yes. 3 Q. (By Mr. Ritchey) Okay. 4 A. Other than going into the units as 5 I explained before. 6 Q. So you may have answered this, but 7 just so I have it in my head, the sex 8 crimes unit you went into you had to have 9 specific training before becoming a member 10 of that? 11 A. Yes, within -- so you have to have 12 that 40-hour class that the DOJ puts on, 13 California DOJ. 14 Once you're in the unit you have 15 to have that class within one year of 16 being in that unit. The child molest unit 17 or child abuse unit and the homicide unit 18 also had those classes, mandatory classes. 19 Q. Is that mandatory based on state 20 law or is that a policy of the San Diego 21 Police Department? 22 A. The classes? That's the 23 Department of Justice, California</p>	<p>1 Department of Justice, so it would be 2 state. 3 Q. All right. Where did you attend 4 high school? 5 A. Riverdale High School in Fort 6 Myers, Florida. 7 Q. Did you attend college? 8 A. Community college, yes. 9 Q. What was the name of that 10 community college? 11 A. Miramar College. 12 COURT REPORTER: What was 13 it? 14 MR. RITCHEY: Miramar. 15 Q. I'm guessing that was in Florida 16 that, too? 17 A. No, that was here in San Diego. 18 Q. Did you graduate from there? 19 A. I did not. 20 Q. How long did you attend Miramar 21 College? 22 A. You know, at the time -- when I 23 was in the military I was in the Navy. I</p>
Page 75	Page 76
<p>1 couldn't real -- it was harder to go to 2 college. 3 Once I became a cop, I would go to 4 night school, so I would only take maybe 5 one class or two at a time, so it got 6 spread out over, you know, a few years. 7 Q. Okay. 8 A. And I just -- there's only two 9 math classes I needed and I stopped, so. 10 Q. I was never good at math either. 11 MS. BOLGER: That's why we 12 all went to law school, Carl. 13 A. That's why I became a cop. My 14 wife keeps telling me just go do it. 15 Well, at this point I don't think it 16 matters, so. 17 Q. (By Mr. Ritchey) Did you attend 18 any other community college or any other 19 secondary schooling? 20 A. No. 21 Q. I believe you told me this, you 22 attended the California Police Academy? 23 MS. BOLGER: Object to the</p>	<p>1 form. 2 A. San Diego Regional Academy. 3 Q. (By Mr. Ritchey) San Diego 4 Regional. What year did you attend that? 5 A. My first -- I was hired 6 December 18th, 1986. 7 Q. And when did you graduate from the 8 Academy? 9 A. I think it was May 15th of 1987. 10 Q. Did you receive any training in 11 sexual assault or rape investigations 12 while at that Academy? 13 A. Yes. 14 Q. Were they specific to those types 15 of investigations or just in general? 16 A. Well, it was for first responders. 17 It wasn't an investigative class. It was 18 for first responders for patrol. 19 Q. Other than what we've discussed 20 already, have you had any other training 21 pertaining to sexual assaults or rape? 22 MS. BOLGER: I'm sorry, 23 other than everything else he said already</p>

Page 77	Page 78
<p>1 this morning?</p> <p>2 MR. RITCHEY: Right, that's</p> <p>3 what I said. Other than what we discussed</p> <p>4 already.</p> <p>5 A. I can't think of any.</p> <p>6 Q. Did the San Diego Police</p> <p>7 Department have standard operating</p> <p>8 procedures?</p> <p>9 A. Yes.</p> <p>10 Q. And who was responsible for</p> <p>11 putting those procedures together?</p> <p>12 A. I have no clue.</p> <p>13 Q. Would it be someone in the</p> <p>14 supervisor or managerial positions?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know the elements of rape</p> <p>17 under Alabama law?</p> <p>18 A. I'm familiar with it, yes.</p> <p>19 Q. What's your familiarity?</p> <p>20 MS. BOLGER: Sorry, object</p> <p>21 to the form.</p> <p>22 Do you mean how was he</p> <p>23 familiar? I don't understand the</p>	<p>1 question. Would you mind rephrasing it?</p> <p>2 Q. (By Mr. Ritchey) I just want to</p> <p>3 know what's your understanding of Alabama</p> <p>4 law on rape.</p> <p>5 A. Well, I understand that you have a</p> <p>6 consent statute. You also have an earnest</p> <p>7 resistance statute.</p> <p>8 Q. What is your understanding of the</p> <p>9 consent statute?</p> <p>10 A. I mean there's different avenues</p> <p>11 to, you know, consent. Obviously somebody</p> <p>12 that's underage can't consent. You know,</p> <p>13 a prisoner can't consent.</p> <p>14 Somebody that is incapacitated</p> <p>15 can't consent. So you have those which</p> <p>16 are kind of common, you know, we also have</p> <p>17 those here in San Diego, so those are</p> <p>18 about the same.</p> <p>19 Q. And what's your understanding of</p> <p>20 an earnest resistance statute?</p> <p>21 A. That is resistance that a victim</p> <p>22 would have to show that they were not</p> <p>23 giving consent to another person, and it</p>
Page 79	Page 80
<p>1 shows that they're not wanting to have</p> <p>2 sexual contact with another person.</p> <p>3 Q. And what is your understanding of</p> <p>4 how that is shown?</p> <p>5 MS. BOLGER: Object to the</p> <p>6 form.</p> <p>7 A. How it's shown by the victim, is</p> <p>8 that --</p> <p>9 Q. (By Mr. Ritchey) Right.</p> <p>10 A. Well, that's resistance, enough</p> <p>11 resistance to show the person that is</p> <p>12 going to possibly sexual assault them that</p> <p>13 they don't want to have, you know, sexual</p> <p>14 contact with them and that is different</p> <p>15 levels.</p> <p>16 Q. Okay. Is there a similar earnest</p> <p>17 resistance statute in California?</p> <p>18 A. No, there's not.</p> <p>19 Q. Was there one while you were</p> <p>20 working with the San Diego Police</p> <p>21 Department?</p> <p>22 A. No.</p> <p>23 Q. Have you ever read any Alabama</p>	<p>1 opinions concerning earnest resistance?</p> <p>2 A. No.</p> <p>3 MS. BOLGER: Object to the</p> <p>4 form.</p> <p>5 Scotch, I don't want to</p> <p>6 interrupt you in the middle of a topic,</p> <p>7 but when you're done with this topic, can</p> <p>8 we take a break?</p> <p>9 MR. RITCHEY: Sure. I've</p> <p>10 just got a few more questions and we're</p> <p>11 going to switch a little bit.</p> <p>12 Q. Have you ever taken a class or</p> <p>13 course on criminal law of Alabama?</p> <p>14 A. No.</p> <p>15 Q. Have you ever conducted your own</p> <p>16 research concerning Alabama law on rape or</p> <p>17 sexual assault?</p> <p>18 A. No.</p> <p>19 Q. Have you ever investigated rape or</p> <p>20 sexual assault in Alabama?</p> <p>21 A. No.</p> <p>22 Q. Have you ever investigated a</p> <p>23 drug-facilitated sexual assault?</p>

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<p>1 A. Have I?</p> <p>2 Q. Yes.</p> <p>3 A. Oh, yeah.</p> <p>4 Q. Is that commonly known as a DFSA?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And what is a DFSA?</p> <p>7 A. It's a person who has been</p> <p>8 sexually assaulted due to intoxication, so</p> <p>9 I mean --</p> <p>10 Q. Go ahead, I'm sorry.</p> <p>11 MS. BOLGER: Let him finish.</p> <p>12 A. I mean what I was going to say</p> <p>13 it's called by several different things,</p> <p>14 but basically that's it.</p> <p>15 Q. (By Mr. Ritchey) Okay. And you</p> <p>16 said it's -- correct me if I'm wrong, but</p> <p>17 sexual assault by intoxication; is that</p> <p>18 what you said?</p> <p>19 A. Yes.</p> <p>20 Q. What do you mean by intoxication?</p> <p>21 A. You broke.</p> <p>22 Q. I'm sorry. What do you mean by</p> <p>23 intoxication?</p>	<p>1 A. Somebody that's under the</p> <p>2 influence of drugs or alcohol or a</p> <p>3 combination of both.</p> <p>4 Q. Are there certain types of drugs</p> <p>5 that are commonly used in DFSAs?</p> <p>6 A. Known as date rape drugs; is that</p> <p>7 what you're asking me about?</p> <p>8 Q. Sure, if that's the answer.</p> <p>9 A. Well, sure --</p> <p>10 MS. BOLGER: Well, object to</p> <p>11 the form. I'm not sure it is the answer.</p> <p>12 I think he's asking you to clarify the</p> <p>13 question.</p> <p>14 So, Carl, you can answer if</p> <p>15 that's the answer, but I think he's asking</p> <p>16 you to clarify the question and not giving</p> <p>17 an answer.</p> <p>18 A. There's several drugs that are</p> <p>19 used in date rape -- I mean there's a</p> <p>20 classification of date rape drugs and then</p> <p>21 there's other drugs that are used, so I</p> <p>22 didn't know if you were asking me about</p> <p>23 date rape drugs or other drugs that are</p>
Page 83	Page 84
<p>1 used.</p> <p>2 Q. (By Mr. Ritchey) Well, let's start</p> <p>3 with date rape drugs. What are those?</p> <p>4 A. Your common ones would be GHB.</p> <p>5 You would have Rohypnol. You would have</p> <p>6 Ecstasy. Those are the common ones.</p> <p>7 Q. Okay.</p> <p>8 A. Also Ketamine.</p> <p>9 Q. And you said other drugs are used</p> <p>10 as well. What are those?</p> <p>11 A. Those would be what we call OTC,</p> <p>12 so over-the-counter drugs, also</p> <p>13 prescription drugs.</p> <p>14 People will use muscle relaxers.</p> <p>15 They'll slip it into a drink. It's not</p> <p>16 known as a date rape drug, but they're</p> <p>17 used because it will have the same effect</p> <p>18 as a date rape drug.</p> <p>19 MS. BOLGER: All right. I</p> <p>20 guess I still don't understand the line of</p> <p>21 questioning, Scotch.</p> <p>22 You can clarify it, but you</p> <p>23 mean all substances used for date rape or</p>	<p>1 are you asking actually like alcohol or do</p> <p>2 you mean like all drugs? I don't</p> <p>3 understand the question.</p> <p>4 I'll just say I object. I</p> <p>5 take that all back. I object to the line</p> <p>6 of questioning. I don't understand the</p> <p>7 question, but if Carl does, he can answer.</p> <p>8 Q. (By Mr. Ritchey) Okay.</p> <p>9 And you say alcohol can be</p> <p>10 considered a drug used for sexual</p> <p>11 assaults; is that correct?</p> <p>12 MS. BOLGER: Well, I just</p> <p>13 said that, but, Carl, I don't know --</p> <p>14 A. She did, but that is correct, it's</p> <p>15 the most common.</p> <p>16 Q. (By Mr. Ritchey) Okay. And how is</p> <p>17 that used, you know, in regards to sexual</p> <p>18 assaults?</p> <p>19 A. The alcohol?</p> <p>20 Q. Right.</p> <p>21 MS. BOLGER: Object to the</p> <p>22 form, yeah.</p> <p>23 A. There's a couple of different</p>

<p style="text-align: right;">Page 85</p> <p>1 ways. You can go to a bar, kind of sit 2 and watch other people drink. 3 Let's just say the male is the 4 suspect, the female is the victim. These 5 guys will go in towards -- later towards 6 the night, they'll watch drunk females or 7 females acting drunk, as far as, you know, 8 unsteady gait, slurring their speech, 9 going to the bathroom constantly and 10 they'll see that they're drunk. 11 And other ways are what we call 12 feeding alcohol. They'll buy them drink 13 after drink after drink. 14 They may introduce say shots into 15 somebody that is only having beer for the 16 night and then your suspect will start 17 buying shots for that person. And so, 18 yeah, there's a few different ways that 19 alcohol is used. 20 Q. Okay. For the date rape drugs we 21 discussed is there a common type of effect 22 that these have on victims? 23 MS. BOLGER: Object to the</p>	<p style="text-align: right;">Page 86</p> <p>1 form. 2 A. The date rape drugs? 3 Q. (By Mr. Ritchey) Right. 4 A. Yes, they're all made to 5 incapacitate them or to lower their 6 ability to fight back or say no. 7 Q. And by incapacitate, what kind of 8 level of incapacitation are we talking 9 about? 10 MS. BOLGER: Object to the 11 form again. 12 A. Someone that just doesn't have 13 their normal faculties about them. It 14 could be someone that is in a blackout 15 situation, someone that's passed out, or 16 someone who is just severely intoxicated 17 and may have a refractive memory so 18 they're only remembering pieces of what's 19 happening. 20 Also, there's a level of 21 intoxication where people start to make 22 bad decisions. 23 Q. (By Mr. Ritchey) What do you mean</p>
<p style="text-align: right;">Page 87</p> <p>1 by make bad decisions? 2 A. It could be not sticking with 3 their plan that night. They get separated 4 from their, you know, from their group. 5 It could be losing track of time. 6 It could be drinking too much, 7 maybe, you know, continuing to drink. 8 Maybe driving a car. Maybe ended up going 9 home with somebody that they don't know, 10 so there's a lot of bad decisions. 11 Q. And you mentioned blacked out. 12 What does that mean? 13 A. That's somebody that is at a level 14 of consciousness where they do not know or 15 understand what's happening around them 16 but they're able to function on some 17 level. 18 So, you have, you know, a lot of 19 drunk drivers, you know, are sometimes in 20 blacked out situations where they leave 21 the bar, they remember sitting in a car, 22 and the next thing that they remember is 23 sitting in the car in their driveway and</p>	<p style="text-align: right;">Page 88</p> <p>1 they just drove 20 miles and don't even 2 remember it. 3 So the difference between the 4 blackout and the passed out, the blackout 5 is when you are walking and talking and 6 functioning, but you have no memory of it. 7 The passed out is you are 8 completely incapacitated. You're passed 9 out on the floor, you're not moving, 10 you're not functioning at all. 11 Q. Is a person's level of function 12 diminished when they're blacked out? 13 MS. BOLGER: Object to the 14 form. You mean cognitive function, 15 physical function? What do you mean? 16 Q. (By Mr. Ritchey) I can't remember 17 exactly what he said, but something about 18 the function of the person while they're 19 blacked out. I'm trying to delve into 20 what that exactly means. 21 A. Could you just repeat your 22 question then? I'm sorry. 23 Q. Yeah. Is a person's level of</p>

<p style="text-align: right;">Page 89</p> <p>1 functionality or is their normal faculties 2 diminished when they're blacked out? 3 A. It depends on the person. I think 4 everybody is different. 5 I mean that's been my experience 6 of blackout. Some people black out for a 7 short period of time, some people black 8 out for a very long period of time. 9 Q. Do you mind repeating that? We 10 had a glitch on our end. 11 A. Sure, I said I think it depends, 12 the level of, you know, the blackout or 13 the function, how much they can function, 14 depends on each person and that goes to, 15 you know, how much you had to eat, height, 16 weight, how much alcohol you had. 17 You know, you may be blacked out 18 for a short period or you may be blacked 19 out for a long period of time. 20 Q. Are you able to determine if an 21 individual's blacked out by their 22 appearance? 23 MS. BOLGER: Object to the</p>	<p style="text-align: right;">Page 90</p> <p>1 form. He just said it depends on the 2 person, but you can answer it, Carl. 3 A. Some people are very highly 4 functioning. You know, we always hear the 5 term functioning alcoholic. 6 I think, you know, that's a point 7 of term here in this deposition, but I 8 guess there's a functioning blacked out 9 person. 10 I would -- I don't think I've been 11 around people who are blacked out to say 12 that that's -- that I could tell the 13 difference. Does that make sense? 14 Q. (By Mr. Ritchey) Sure. 15 A. I'm not trying to skirt around 16 your question. I just don't know. 17 Q. Okay. Where did you learn your 18 definition of blacked out? 19 A. Just from my cases, just from 20 working them and understanding how alcohol 21 works. 22 Q. And where did you learn how 23 alcohol works?</p>
<p style="text-align: right;">Page 91</p> <p>1 A. Well, between personally and also 2 from my cases, just how -- you know, why 3 some people, you know, get drunk off of 4 two beers and why others don't get drunk 5 off of six. 6 You know, we do receive training 7 in the academy on people being drunk in 8 public, also driving while, you know, 9 under the influence, so we can gauge, you 10 know, what their eyes look like and that 11 type of thing. 12 MS. BOLGER: Scotch, are you 13 getting near a break? 14 MR. RITCHEY: Yeah, I'm 15 getting close. Just a few more. 16 Q. In your experience do victims, are 17 victims passed out or become completely 18 incapacitated by these date rape drugs 19 that we've discussed? 20 A. Yes, they do. 21 MS. BOLGER: Object to the 22 form. The whole category of date rape 23 drugs that you just discussed?</p>	<p style="text-align: right;">Page 92</p> <p>1 MR. RITCHEY: Right. 2 A. Yes, some of the -- all of those 3 can make you passed out. Not all of them 4 do, though. 5 It depends on the dosage that is 6 given and what form that it's given, if 7 it's mixed with alcohol, so there's a lot 8 of different levels of it, but. 9 Q. Are there common ways for these 10 date rape drugs to be administered to 11 victims? 12 MS. BOLGER: Object to the 13 form. 14 A. It could be secretly. It could be 15 voluntarily. 16 Q. (By Mr. Ritchey) What do you mean 17 by secretly? 18 A. It could be -- I knew you were 19 going to ask that. It could be slipped 20 into their drink. 21 Q. And then voluntarily what do you 22 mean by that? 23 A. They just take it on their own.</p>

<p style="text-align: right;">Page 93</p> <p>1 They're given it. You see that more in 2 Ecstasy and Rohypnol. 3 GHB some people take that 4 voluntarily, but not many. 5 MR. RITCHEY: All right. I 6 think we're at good place to stop, I'll be 7 changing subjects, so if y'all want to 8 take I guess a couple minute break or 9 y'all tell me what y'all want to do. 10 MS. BOLGER: Yeah, why don't 11 we take -- my bladder thanks you. Why 12 don't we take a ten-minute break and we 13 can get back and like ten? 14 MR. RITCHEY: Sounds good. 15 VIDEOGRAPHER: Off the 16 record at 11:45. 17 (Recess was taken.) 18 VIDEOGRAPHER: Back on the 19 reported at 11:56 a.m. 20 Q. (By Mr. Ritchey) All right. 21 Mr. Hershman, I'm going to get into your 22 involvement with this case that we're here 23 for today.</p>	<p style="text-align: right;">Page 94</p> <p>1 When were you first contacted? 2 A. That would be July -- I think it's 3 July of last year, 2020, maybe a little 4 before that but I was hired in July. 5 MS. BOLGER: I think you may 6 have forgotten that last year didn't 7 really happen. 8 Q. (By Mr. Ritchey) Who contacted 9 you? 10 A. I believe it was Kate. 11 Q. Did she provide you any 12 information about the case which you 13 relied upon in your expert report? 14 A. Yes. 15 Q. What was that? 16 A. She -- these things that I listed 17 in my report that she had sent me, which 18 was a felony packet, at the time there 19 were two articles from BuzzFeed, there 20 were some recordings that she sent me. 21 So everything in my report she had 22 sent me, not all at once, but kind of 23 gradually over a short period of time.</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. And you listed all of that in your 2 report? 3 A. I did. 4 Q. Is there anything not listed in 5 your report that you have relied upon in 6 forming your opinions? 7 MS. BOLGER: As I said 8 earlier, also the stuff we sent you last 9 week, it listed additional materials, so 10 just so you know for the record we did 11 provide Mr. Hershman additional materials 12 that are listed in the email you got last 13 week. 14 A. Yes, they also sent me some 15 depositions, but they weren't -- those 16 materials weren't used to form my opinion 17 in my report. 18 Q. (By Mr. Ritchey) Did any of the 19 material you received after you formed 20 your opinion and wrote your report change 21 any of your opinions in your expert 22 report? 23 A. No, sir.</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. What is your understanding as to 2 what this lawsuit is about? 3 A. From what I understand, BuzzFeed 4 was being accused of writing two articles 5 that Jones and Hastings didn't agree with 6 the information in those articles. 7 Q. And I believe you already said 8 this, but I'm going to ask it again. 9 Have you read the BuzzFeed article 10 published by Katie Baker on June 22nd, 11 2017, which involved the Rondini 12 investigation? 13 MS. BOLGER: I object to the 14 form. 15 You can answer. 16 A. I did. 17 Q. (By Mr. Ritchey) What was your 18 impression of Adam Jones after reading 19 that article? 20 A. Well, to tell you the truth, I 21 only read that article once and that was a 22 year ago, almost a year ago, so I don't 23 remember exactly what the article</p>

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<p>1 stated --</p> <p>2 Q. Are you saying you've only -- I'm</p> <p>3 sorry --</p> <p>4 A. I was just going to say I only</p> <p>5 read it once, so.</p> <p>6 Q. Okay. And just for my</p> <p>7 clarification, you didn't read the article</p> <p>8 before you were hired by the defendants,</p> <p>9 did you?</p> <p>10 A. No, I did not.</p> <p>11 Q. Did you have an impression of Josh</p> <p>12 Hastings after reading that article?</p> <p>13 A. Again, it doesn't -- I don't</p> <p>14 recall the article or what exactly it</p> <p>15 said, so I don't -- I didn't form my</p> <p>16 opinion on either one of them from that</p> <p>17 article.</p> <p>18 Q. Have you ever met Adam Jones or</p> <p>19 Josh Hastings?</p> <p>20 A. No, I have not.</p> <p>21 Q. Have you ever been to Tuscaloosa,</p> <p>22 Alabama?</p> <p>23 A. No, I've been to Mobile and</p>	<p>1 Huntsville, but I have never been to</p> <p>2 Tuscaloosa.</p> <p>3 Q. And what were you hired to do in</p> <p>4 this case?</p> <p>5 A. I was hired to take a look at the</p> <p>6 investigation that was conducted by Jones</p> <p>7 and Hastings and to give my opinion on the</p> <p>8 quality and type of investigation that</p> <p>9 they conducted.</p> <p>10 Q. All right. Let me show you what's</p> <p>11 going to be marked as Exhibit 118.</p> <p>12 (Whereupon, a document was marked</p> <p>13 as Plaintiff's Exhibit No. 118 and</p> <p>14 is attached to the original</p> <p>15 transcript.)</p> <p>16 Q. Do you recognize Exhibit 118?</p> <p>17 A. I do.</p> <p>18 Q. And just for the record what is</p> <p>19 it?</p> <p>20 A. It is my copy of my report.</p> <p>21 MS. BOLGER: Of course,</p> <p>22 technically it's the first page of his</p> <p>23 report, but I have faith, Scotch, that you</p>
Page 99	Page 100
<p>1 have the other 39 pages, though.</p> <p>2 Q. (By Mr. Ritchey) I sure do. I</p> <p>3 would love to scroll through them with</p> <p>4 you, but I hoped that wouldn't be</p> <p>5 necessary.</p> <p>6 MS. BOLGER: No, I know. I</p> <p>7 just feel like I should mention that we</p> <p>8 can only see one. I don't think you're</p> <p>9 tricking me.</p> <p>10 MR. RITCHEY: No, I'm not</p> <p>11 tricking you.</p> <p>12 MS. BOLGER: No, I don't</p> <p>13 think you are.</p> <p>14 Q. (By Mr. Ritchey) We'll go through</p> <p>15 it in a little bit.</p> <p>16 Does this report contain all of</p> <p>17 your opinions that you're intending to</p> <p>18 offer at the trial of this case if called</p> <p>19 to do so?</p> <p>20 A. I think I might have one or two</p> <p>21 opinions outside this report, but this</p> <p>22 reflects pretty much most of them, yes.</p> <p>23 Q. What are your one or two opinions</p>	<p>1 outside the report?</p> <p>2 A. I don't know. I mean, I'm just</p> <p>3 saying I kind of want to leave it</p> <p>4 open-ended that there might be an opinion</p> <p>5 down the road that I think of that is not</p> <p>6 in my report, but sitting here right now,</p> <p>7 I don't know what that would be.</p> <p>8 Q. Okay. But as we sit here today,</p> <p>9 you don't have any other opinions other</p> <p>10 than what's included in this report?</p> <p>11 A. That is correct.</p> <p>12 Q. Okay. All right. On pages 1</p> <p>13 through 6 of Exhibit 118 you've listed the</p> <p>14 materials you reviewed.</p> <p>15 If you need me to I can scroll</p> <p>16 through all of them, but I'm just going to</p> <p>17 ask is this the only materials you relied</p> <p>18 upon in forming your opinions expressed in</p> <p>19 this report?</p> <p>20 A. That is correct.</p> <p>21 Q. Have you reviewed the Tuscaloosa</p> <p>22 County Homicide Unit's standard operating</p> <p>23 procedures?</p>

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<p>1 A. I have.</p> <p>2 Q. And when did you review those</p> <p>3 SOPs?</p> <p>4 A. Probably about a month ago. Maybe</p> <p>5 earlier than that, but not much earlier</p> <p>6 than that.</p> <p>7 Q. Has your opinion changed after</p> <p>8 reviewing the SOPs?</p> <p>9 A. No, sir.</p> <p>10 Q. Why not?</p> <p>11 A. I'm sorry, what was that?</p> <p>12 Q. Why not?</p> <p>13 A. Why not?</p> <p>14 Q. Correct.</p> <p>15 A. Is that -- I think the SOPs</p> <p>16 actually support my report.</p> <p>17 Q. How does the SOP support your</p> <p>18 report?</p> <p>19 A. It talks about how to treat a</p> <p>20 victim of a sexual assault and the things</p> <p>21 that are listed there, I can tell you that</p> <p>22 Investigator Jones did not follow by</p> <p>23 having comfort for the victim and having</p>	<p>1 -- making them feel comfortable.</p> <p>2 Q. And how did he fail at doing that?</p> <p>3 A. Well, he read her rights to her,</p> <p>4 sir. I mean his line of questioning was</p> <p>5 accusatorial. He treated her as a suspect</p> <p>6 at one portion of the interview. He</p> <p>7 didn't allow her to at least get some</p> <p>8 sleep, some food.</p> <p>9 Q. Is it your opinion he shouldn't</p> <p>10 have read Ms. Rondini her rights?</p> <p>11 MS. BOLGER: Object to the</p> <p>12 form.</p> <p>13 A. No, he shouldn't have.</p> <p>14 Q. (By Mr. Ritchey) Even though she</p> <p>15 was confessing to a crime?</p> <p>16 A. Correct.</p> <p>17 Q. Did you review the Tuscaloosa</p> <p>18 Police Department PGO or SOP?</p> <p>19 A. Is that the same document?</p> <p>20 Q. It would be different than the</p> <p>21 Tuscaloosa County Homicide Unit's SOP.</p> <p>22 MS. BOLGER: So, Scotch, he</p> <p>23 reviewed lots and lots of documents and I</p>
Page 103	Page 104
<p>1 listed them all for you, so if you want to</p> <p>2 show him the list, he can do it, but it's</p> <p>3 a little unfair having a list in your</p> <p>4 possession.</p> <p>5 If you want to refresh his</p> <p>6 memory, you can, but he's not going to</p> <p>7 remember the whatever it was, 55 documents</p> <p>8 he's looked at verbatim in any one moment,</p> <p>9 and since you have the list I think you</p> <p>10 should show it to him. If it's there he</p> <p>11 probably reviewed it.</p> <p>12 Q. (By Mr. Ritchey) Do you remember</p> <p>13 reviewing it, Mr. Hershman?</p> <p>14 A. I don't know which -- so is there</p> <p>15 two different SOPs that you're talking</p> <p>16 about? I don't understand the question.</p> <p>17 Is it -- is there one for</p> <p>18 Tuscaloosa Police Department and then one</p> <p>19 for the homicide task force; is that what</p> <p>20 you're saying?</p> <p>21 Q. Correct.</p> <p>22 A. I don't recall if I read the other</p> <p>23 one or not.</p>	<p>1 Q. On page 2 of your report, which is</p> <p>2 Exhibit 118, I think this was just a typo,</p> <p>3 I just want to make sure I'm interpreting</p> <p>4 that right, but list Item Number 1 says</p> <p>5 BuzzFeed News article dated July 3rd,</p> <p>6 2017, so that's supposed to be June 22nd,</p> <p>7 2017?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. Then I'm going to scroll</p> <p>10 down to page 5. It's a list of items, it</p> <p>11 says images of DVDs and/or -- I'm sorry,</p> <p>12 images of various DVDs and/or CDs.</p> <p>13 Do you see where I am?</p> <p>14 A. Yes.</p> <p>15 Q. Did you just review the images of</p> <p>16 these DVDs or CD?</p> <p>17 A. No, sir, they were just copies of</p> <p>18 the DVDs that were inserted into the</p> <p>19 felony packet. I never had a DVD where I</p> <p>20 actually viewed what was on it.</p> <p>21 Q. Did you ever ask to see what was</p> <p>22 on this those DVDs or CDs?</p> <p>23 MS. BOLGER: And just for</p>

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<p>1 the record that's a really misleading</p> <p>2 question, because as you know, we don't</p> <p>3 have those.</p> <p>4 So to the extent we're</p> <p>5 implying that something was withheld or we</p> <p>6 didn't have access to something, that is</p> <p>7 misleading.</p> <p>8 As you know, we don't have</p> <p>9 those and there's no evidence as to what</p> <p>10 was on them anywhere, so, no, Carl did not</p> <p>11 see them.</p> <p>12 A. That's my answer.</p> <p>13 Q. (By Mr. Ritchey) Is that correct?</p> <p>14 A. That's correct. I didn't view or</p> <p>15 ask for those, yeah.</p> <p>16 Q. Then on page 6 number 19, number</p> <p>17 20 -- number 19 says screen shots of</p> <p>18 Innisfree bar and number 20 says screen</p> <p>19 shots of Houndstooth Condominiums</p> <p>20 surveillance video.</p> <p>21 Did you only view screen shots of</p> <p>22 these videos or have you reviewed the</p> <p>23 whole videos?</p>	<p>1 A. At the time I wrote this it was</p> <p>2 the screen shots only. Yeah, they've only</p> <p>3 been the screen shots.</p> <p>4 MS. BOLGER: When you wrote</p> <p>5 this report is what you're saying?</p> <p>6 THE WITNESS: Yes.</p> <p>7 Q. (By Mr. Ritchey) Do you remember</p> <p>8 what those screen shots were of?</p> <p>9 A. The screen shots at the bar just</p> <p>10 was just a bunch of people standing</p> <p>11 around.</p> <p>12 There was really no compelling</p> <p>13 image that -- you know, within those</p> <p>14 screen shots.</p> <p>15 The other was of Rondini and Bunn</p> <p>16 and Barksdale walking down the highway at</p> <p>17 her apartment complex.</p> <p>18 Q. Have you ever -- or since you've</p> <p>19 written this report, have you ever viewed</p> <p>20 the full videos from Innisfree or</p> <p>21 Houndstooth Condominiums?</p> <p>22 A. I don't believe so. I don't</p> <p>23 recall that.</p>
Page 107	Page 108
<p>1 Q. Is there a reason why you haven't?</p> <p>2 A. I don't think they were given to</p> <p>3 me. I know definitely the one at the bar</p> <p>4 was -- that interview or screen shots were</p> <p>5 just her leaving and him leaving, him</p> <p>6 meaning Mr. Bunn.</p> <p>7 Yeah, I just don't recall seeing</p> <p>8 any actual them walking or anything like</p> <p>9 that. I mean, I reviewed a lot of</p> <p>10 material, so.</p> <p>11 Q. The Houndstooth Condominium</p> <p>12 apartment video was kind of important,</p> <p>13 wasn't it?</p> <p>14 A. No, I don't -- it's important the</p> <p>15 fact that they had gone there, but it</p> <p>16 wasn't that important, no.</p> <p>17 Q. Well, this was the time that you</p> <p>18 noted that Ms. Rondini did not remember;</p> <p>19 isn't that right?</p> <p>20 A. That's correct.</p> <p>21 Q. So wouldn't viewing these whole</p> <p>22 videos be important to your review of his</p> <p>23 investigation?</p>	<p>1 A. Well, when you say important, it's</p> <p>2 not -- it's not like it's a -- you know,</p> <p>3 that it's something very compelling.</p> <p>4 I mean, she did state that she did</p> <p>5 not remember going there and then, you</p> <p>6 know, she doesn't remember leaving the</p> <p>7 bar, so as to her being blacked out, I</p> <p>8 think verbally she is able to relay that.</p> <p>9 I didn't need a video to show</p> <p>10 that. I mean it was nice to have because</p> <p>11 in an investigation you want to have</p> <p>12 everything.</p> <p>13 But, you know, if she's walking</p> <p>14 and talking like normal, then, you know,</p> <p>15 that's part of being blacked out.</p> <p>16 Q. Wouldn't that contradict being</p> <p>17 blacked out, though?</p> <p>18 A. No. Blacked out is not -- there's</p> <p>19 a difference between being drunk and</p> <p>20 stumbling and as to blacked out.</p> <p>21 You can talk to somebody blacked</p> <p>22 out and you would have no clue that they</p> <p>23 were.</p>

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<p>1 Q. All right. On number 21, it says</p> <p>2 you reviewed an excerpt of data reviewed</p> <p>3 -- I'm sorry, retrieved from Megan</p> <p>4 Rondini's phone by Tuscaloosa County</p> <p>5 Homicide Unit of the Tuscaloosa Sheriff's</p> <p>6 Office.</p> <p>7 Do you remember what excerpt you</p> <p>8 had?</p> <p>9 MS. BOLGER: Just for the</p> <p>10 record, part of it is listed above; right?</p> <p>11 There's -- this is part of a</p> <p>12 much longer list, so there's other things</p> <p>13 in the list other than that reference.</p> <p>14 Q. (By Mr. Ritchey) Well, it may be.</p> <p>15 It's just not clear on his report is what</p> <p>16 I'm just trying to get clarification of.</p> <p>17 A. Well, some of it was her texting</p> <p>18 her friends and some of it was her texting</p> <p>19 different -- at different parts of the</p> <p>20 night once she had left the bar.</p> <p>21 Q. Are sending and receiving these</p> <p>22 text messages that you reviewed consistent</p> <p>23 with being blacked out?</p>	<p>1 MS. BOLGER: I'm sorry,</p> <p>2 could you say it again, Scotch? You cut</p> <p>3 out.</p> <p>4 MR. RITCHEY: Do you mind</p> <p>5 reading it back?</p> <p>6 (Whereupon, requested portion was</p> <p>7 read back by court reporter.)</p> <p>8 MR. RITCHEY: And that's you</p> <p>9 reviewed.</p> <p>10 A. It can be, yes.</p> <p>11 MS. BOLGER: Scotch, since</p> <p>12 there's no pending question, you guys must</p> <p>13 have the microphone in a slightly</p> <p>14 different space today because you're kind</p> <p>15 of garbled a little.</p> <p>16 Would you mind just moving</p> <p>17 it closer? I don't want to have to</p> <p>18 interrupt you in every question.</p> <p>19 MR. RITCHEY: Does that</p> <p>20 sound better?</p> <p>21 MS. BOLGER: Yeah, that does</p> <p>22 actually. Thanks.</p> <p>23 Q. (By Mr. Ritchey) Okay.</p>
Page 111	Page 112
<p>1 I'm going to scroll to page 9. On</p> <p>2 page 9 it's Section 4 rebuttal of opinion</p> <p>3 by Robert G. Pastula.</p> <p>4 You said you've read the report</p> <p>5 and disagree with his analysis,</p> <p>6 conclusions, and opinions and will offer</p> <p>7 rebutting testimony.</p> <p>8 What is that testimony you'll be</p> <p>9 offering?</p> <p>10 A. As to his report?</p> <p>11 Q. Correct.</p> <p>12 A. What he states in his report that</p> <p>13 the two investigators had done everything</p> <p>14 they could, they had done a good job, and</p> <p>15 I would rebut that, that statement alone</p> <p>16 that that is not what occurred.</p> <p>17 Q. What --</p> <p>18 A. Could you scroll up a little bit?</p> <p>19 Q. Sure.</p> <p>20 A. No, I'm sorry, down.</p> <p>21 Q. Okay.</p> <p>22 A. Yeah, so I stated right there what</p> <p>23 I would be rebutting, that they had drew</p>	<p>1 premature conclusions and he's saying that</p> <p>2 they had done a good job, and my opinion</p> <p>3 is that they have not -- that they did</p> <p>4 not.</p> <p>5 Q. Okay. Are there any other</p> <p>6 opinions that you're offering to rebut</p> <p>7 Mr. Pastula's opinion that is not included</p> <p>8 in this expert report?</p> <p>9 A. Not off the top of my head, no.</p> <p>10 Q. In your opinion, how did Jones and</p> <p>11 Hastings fail to complete a thorough,</p> <p>12 factual and detailed investigation into</p> <p>13 Ms. Rondini's allegations of sexual</p> <p>14 assault?</p> <p>15 A. Well, they did not conduct a</p> <p>16 detailed report because they from the very</p> <p>17 beginning of them responding to the</p> <p>18 hospital all the way through until the end</p> <p>19 of the day they had made several gross</p> <p>20 errors in their investigation.</p> <p>21 And a bad investigation is you're</p> <p>22 going to have a bad outcome. And there's</p> <p>23 a lot of things that they did not do</p>

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<p>1 proper, and that was from not getting</p> <p>2 enough information at the hospital, not</p> <p>3 having a forensic kit, a complete forensic</p> <p>4 kit done on Ms. Rondini.</p> <p>5 Failure to obtain a court-ordered</p> <p>6 search warrant. They did not arrest</p> <p>7 Mr. Bunn so he also could be processed.</p> <p>8 The interview of Rondini was just</p> <p>9 not adequate in any way. They did not</p> <p>10 receive the proper information from</p> <p>11 Rondini, which they could have if they</p> <p>12 would have interviewed her correctly.</p> <p>13 They allowed Mr. Bunn to not be</p> <p>14 questioned for four days which is unheard</p> <p>15 of. There was evidence that was collected</p> <p>16 that was never tested.</p> <p>17 The supposed interrogation of</p> <p>18 Mr. Bunn was inadequate and completely</p> <p>19 inappropriate for what this was. Their</p> <p>20 actions -- unfortunately we won't know the</p> <p>21 truth of what happened that night because</p> <p>22 of their actions, Hastings and Jones, and</p> <p>23 the way they conducted their</p>	<p>1 investigation.</p> <p>2 For Mr. Bunn they didn't offer him</p> <p>3 a polygraph. They had in my view</p> <p>4 confirmation bias as to his, you know, for</p> <p>5 him as for what he was being accused of,</p> <p>6 and their investigation, excuse me, was</p> <p>7 clearly -- their target was to end the</p> <p>8 investigation as quick as it started.</p> <p>9 Q. Do you know if the Homicide Unit</p> <p>10 had access to a polygraph at the time of</p> <p>11 the investigation?</p> <p>12 A. I'm sorry, all I heard was the</p> <p>13 last part of that.</p> <p>14 Q. Do you know if the Homicide Unit</p> <p>15 had access to a polygraph at the time of</p> <p>16 the investigation?</p> <p>17 A. I don't know.</p> <p>18 Q. And they couldn't give him a</p> <p>19 polygraph if they didn't have access to a</p> <p>20 polygraph; is that correct?</p> <p>21 MS. BOLGER: Object to the</p> <p>22 form.</p> <p>23 A. If they don't have it, they don't</p>
Page 115	Page 116
<p>1 have it, but they could always offer it.</p> <p>2 I mean somebody -- I would assume somebody</p> <p>3 down there has a polygraph --</p> <p>4 Q. (By Mr. Ritchey) But you've never</p> <p>5 been to Tuscaloosa -- I'm sorry.</p> <p>6 But you have never been to</p> <p>7 Tuscaloosa so you wouldn't know that; is</p> <p>8 that correct?</p> <p>9 A. That's correct, uh-huh</p> <p>10 (affirmative).</p> <p>11 Q. Were Jones and Hastings the only</p> <p>12 two investigators that were assigned to</p> <p>13 this case?</p> <p>14 A. No.</p> <p>15 Q. Did any of the other investigators</p> <p>16 that were assigned to this case contribute</p> <p>17 to the failure which you opine on in your</p> <p>18 expert opinion?</p> <p>19 A. Well, the investigation, I think</p> <p>20 his last name is Carroll, when he takes</p> <p>21 the statement from Mr. Bunn while they're</p> <p>22 sitting in a car is -- there's just no</p> <p>23 relevant information that he obtains from</p>	<p>1 him.</p> <p>2 And the fact that he's put in a</p> <p>3 situation where he doesn't know anything</p> <p>4 about the case and here he is charged with</p> <p>5 taking a statement from a suspect.</p> <p>6 Q. How do you know --</p> <p>7 A. I mean that's --</p> <p>8 Q. I'm sorry. Go ahead.</p> <p>9 A. I was just going to say that this</p> <p>10 whole investigation was rushed and it</p> <p>11 didn't need to be rushed.</p> <p>12 This investigation should have</p> <p>13 took four to six weeks to complete, and by</p> <p>14 piecing or to piecemeal out different</p> <p>15 things, you do this, you do that, and then</p> <p>16 not to have it all come back to one lead</p> <p>17 investigator is just not a proper</p> <p>18 investigation, it's not even close.</p> <p>19 Q. Why is that not a proper</p> <p>20 investigation to use other investigators</p> <p>21 on a case?</p> <p>22 MS. BOLGER: Object to the</p> <p>23 form. That's not what he said.</p>

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<p>1 Carl, go ahead.</p> <p>2 A. Yeah, so when you go to a crime</p> <p>3 scene, of course, you have other</p> <p>4 investigators, people are all doing</p> <p>5 certain things, and, you know, you have</p> <p>6 the crime scene, I take the victim, you do</p> <p>7 the witness statements.</p> <p>8 At some point, though, you come</p> <p>9 together and all that information gets</p> <p>10 funneled into one investigator, which is</p> <p>11 the lead investigator.</p> <p>12 The one thing that you don't want</p> <p>13 to piecemeal out would be the person that</p> <p>14 interviews the victim should also</p> <p>15 interview the suspect. That's just one</p> <p>16 thing you don't piecemeal.</p> <p>17 Q. And how do you come to learn not</p> <p>18 to piecemeal that?</p> <p>19 A. Well, I just have been taught that</p> <p>20 and I've also practiced it and I also</p> <p>21 teach that that because you lose so much</p> <p>22 -- there's so many questions that don't</p> <p>23 get answered when one side doesn't know</p>	<p>1 what the other side is saying.</p> <p>2 Q. And do you know if Adam Jones or</p> <p>3 Josh Hastings were taught that same</p> <p>4 tactic?</p> <p>5 A. I'm sorry, say that again.</p> <p>6 MR. RITCHEY: Do you mind</p> <p>7 repeating that?</p> <p>8 (Whereupon, requested portion was</p> <p>9 read back by court reporter.)</p> <p>10 MS. BOLGER: Object to the</p> <p>11 form.</p> <p>12 A. I don't know if they were taught</p> <p>13 that. It's just -- that's investigation</p> <p>14 101. That's -- I mean, that's just common</p> <p>15 sense that you don't do that.</p> <p>16 Q. (By Mr. Ritchey) Did you have this</p> <p>17 common sense before you attended your</p> <p>18 first law enforcement training?</p> <p>19 MS. BOLGER: Object to the</p> <p>20 form of the question.</p> <p>21 You can answer that one</p> <p>22 question about common sense.</p> <p>23 A. Sure, I learned that in patrol.</p>
Page 119	Page 120
<p>1 Q. (By Mr. Ritchey) Right. And you</p> <p>2 were trained on that; right?</p> <p>3 MS. BOLGER: Trained on</p> <p>4 common sense? Sorry, is that the</p> <p>5 question?</p> <p>6 MR. RITCHEY: Well, he said</p> <p>7 it was common sense to him so --</p> <p>8 MS. BOLGER: No, I'm asking</p> <p>9 what the question is. I'm not arguing</p> <p>10 with you. I want to know what the</p> <p>11 question you're asking the witness is.</p> <p>12 Q. (By Mr. Ritchey) I want to know</p> <p>13 how he was trained on what he's been</p> <p>14 discussing?</p> <p>15 MS. BOLGER: And he just</p> <p>16 told you he was in patrol and he was</p> <p>17 trained when he was in the sex crimes</p> <p>18 unit. He just answered the question.</p> <p>19 MR. RITCHEY: No, I think</p> <p>20 you answered that.</p> <p>21 MS. BOLGER: No, that's what</p> <p>22 he said, but, Carl, you can answer it.</p> <p>23 When were you trained to investigate</p>	<p>1 crimes?</p> <p>2 A. Yeah, I mean, when you're a patrol</p> <p>3 officer you go to a crime scene, you need</p> <p>4 to find out what happened and you don't</p> <p>5 have -- you don't split people up.</p> <p>6 And then if you do, and that's</p> <p>7 fine to do that, but then whoever is</p> <p>8 talking to the victim needs to know what</p> <p>9 the suspect said, and that's when you --</p> <p>10 you know, when you go to a crime scene as</p> <p>11 a patrol officer things happen very</p> <p>12 quickly, and it's different than when</p> <p>13 you're an investigator.</p> <p>14 When you become an investigator,</p> <p>15 that's -- you know, you're the lead</p> <p>16 investigator. You have to know every</p> <p>17 aspect of what was said, done, collected,</p> <p>18 not collected. You need to know all that.</p> <p>19 And when you have -- in this case,</p> <p>20 you know, Mr. Bunn was questioned by two</p> <p>21 different investigators, one was by</p> <p>22 Investigator Carroll and the other was by</p> <p>23 Hastings.</p>

<p style="text-align: right;">Page 121</p> <p>1 Now, did they talk amongst 2 themselves? Who knows. I mean, none of 3 it is documented. 4 Q. (By Mr. Ritchey) Who taught you 5 not to split up interrogations? 6 MS. BOLGER: Object to the 7 form of the question. 8 A. I don't know who taught me that, 9 sir. I became a detective in 1997 and 10 that's just a very basic thing that you 11 don't do. It's very basic. 12 Q. (By Mr. Ritchey) Well, who told 13 you it was basic? Is this something you 14 got on-the-job training or is this some 15 kind of formal training you received? 16 MS. BOLGER: Same objection. 17 A. It's my experience. 18 Q. (By Mr. Ritchey) And do you know 19 if Adam Jones or Josh Hastings had the 20 same experience as you did? 21 A. I would -- I don't know. I don't 22 think so. Who knows. 23 I mean if they did, they wouldn't</p>	<p style="text-align: right;">Page 122</p> <p>1 have done what they did. 2 Q. Do you know what training Adam 3 Jones or Josh Hastings went through? 4 A. No, I do not. 5 Q. Do you know what on-the-job 6 training Adam Jones or Josh Hastings had? 7 A. No, I do not. 8 Q. Do you know what rank I believe 9 you said Carroll was that took Mr. Bunn's 10 interview on July 2nd, 2015? 11 A. I'm sorry, his rank? 12 Q. Right. 13 A. I believe he was a sergeant. 14 Q. Is that usually someone who is 15 superior to detectives? 16 MS. BOLGER: Object to the 17 form of the question. 18 Q. (By Mr. Ritchey) I'm sorry, what 19 was that, Mr. Hershman? 20 A. Yes. 21 Q. On page 10 of your report, saying 22 Jones and Hastings failed to make 23 follow-up inquiries?</p>
<p style="text-align: right;">Page 123</p> <p>1 MS. BOLGER: I'm sorry, I 2 don't know where you are. Where are you? 3 Q. (By Mr. Ritchey) On page 10, end 4 of the first line going into the second 5 line. 6 MS. BOLGER: Okay. 7 A. I see it. 8 Q. (By Mr. Ritchey) What follow-up 9 inquiries are you alleging they failed to 10 do? 11 A. Well, first of all, they didn't -- 12 they could have followed up with the 13 nurse, the hospital staff, and could have 14 interviewed them. 15 Could have tested the one sample 16 that they did have. They could have 17 talked to the nine people that was given 18 to them on Ms. Rondini's handwritten list 19 of the nine people she was with that night 20 along with their phone numbers. 21 They could have talked to the bar 22 staff. They could have talked to any 23 customers that was there that possibly</p>	<p style="text-align: right;">Page 124</p> <p>1 were witnesses. 2 Could have talked to the doorman 3 as to her condition walking out. They 4 could have dumped his phone. They could 5 have followed up with the second tier 6 witnesses, her friends that knew how she 7 felt or how she acted, you know, days 8 after the assault and talked with her 9 parents to see what kind of, you know, has 10 she changed in any way, how the assault 11 had affected her. 12 They could have followed up with 13 maybe Barksdale's phone also to see if he 14 had been texting anybody. There's a lot 15 of questions that were unanswered or at 16 least needed to be clarified with the taxi 17 cab driver. 18 So, yeah, there's a lot of things 19 that, you know, they could have done. 20 They could have brought Rondini back in 21 for another interview about her assault, 22 about the theft and clear up a lot of what 23 was lacking in the investigation.</p>

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<p>1 Q. What could the nurse or hospital 2 staff told Jones or Hastings? 3 A. They could have been witnesses to 4 Ms. Rondini when she first arrived on her 5 demeanor, things that she had told them 6 about the assault, did they witness her 7 talking about her being held down. 8 In their reports, in the nurse's 9 report it actually says was held down. 10 They should have went back and contacted 11 that nurse and asked her what Rondini had 12 told them about being held down. 13 Q. That was Ms. Rondini -- 14 A. That wasn't done. 15 Q. Is Ms. Rondini's recount of what 16 happened not enough? 17 MS. BOLGER: What? I'm 18 sorry, objection. I didn't understand the 19 question but I may also not have heard the 20 end. 21 Would you ask it again, 22 Scotch? 23 Q. (By Mr. Ritchey) Sure.</p>	<p>1 So you're saying they could have 2 -- the nursing or hospital staff could 3 have told a little bit more about what 4 Rondini said to them. 5 Was it not enough to take 6 Ms. Rondini's statement about what 7 happened? 8 A. No, an investigator in any case 9 has to either corroborate or contradict 10 what people say. 11 And the fact that she had said 12 this to at least two different people, 13 they needed to corroborate what she had 14 said, and just somebody writing it down on 15 the form did she say -- did she just say 16 she was held down or did she elaborate 17 more on it. 18 I mean was this just kind of a, 19 you know, a bullet form of, you know, 20 writing it down or did she elaborate? So, 21 yeah, you want to be able to corroborate 22 because, look, that's a very, very 23 important statement for Ms. Rondini to</p>
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<p>1 make. 2 I mean very -- that's very 3 compelling that she made that statement, 4 and not once though at least twice. 5 Q. Couldn't Ms. Rondini have 6 elaborated on that statement in her 7 interviews with Jones and Hastings? 8 A. If she was asked, yeah. She was 9 never -- she volunteers it, but she was 10 never asked. 11 So, you know, for me they should 12 have, you know, have her clarify it more 13 as to how she was held down, when she was 14 held down, at what point, and so on and so 15 forth. 16 But talking to the hospital staff 17 is it may be that she had relayed 18 something to them more than she had 19 relayed to Hastings and Jones. 20 Again, that's a very standard 21 thing to do to go back and talk to the 22 nurses, especially the report is one page. 23 I mean it's -- I've never seen that</p>	<p>1 before. 2 Q. What report are you referring to? 3 A. The report that the nurse prepared 4 at the hospital. 5 Q. Okay. So you've never seen the 6 hospital or a hospital have a one-page 7 report concerning a sexual assault? 8 A. No -- 9 Q. Do you know -- 10 A. -- I mean here in San Diego 11 they're 10 to 15 pages long. 12 Q. Do you know if the hospital that 13 Ms. Rondini went to had a SANE nurse or a 14 SANE examiner? 15 A. I don't believe so. 16 Q. Are you aware of any hospital 17 policy or procedure as it pertains to 18 sexual assaults? 19 MS. BOLGER: Object to the 20 form. Do you mean in the world? 21 Q. (By Mr. Ritchey) No, I'm sorry for 22 DCH. 23 A. I'm not aware, no.</p>

32 (Pages 125 to 128)

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<p>1 Q. What would you be able to gather 2 from Ms. Rondini's demeanor? 3 A. That she had suffered from trauma. 4 Would she be capable at that point in time 5 to give a detailed interview. Was she be 6 capable of that. 7 What caused her demeanor to be, 8 you know, crying or upset or scared. She 9 obviously had reacted to something that 10 happened to her so demeanor is very 11 important. 12 Q. Do you know whether or not Jones 13 or Hastings talked to a nurse or someone 14 at the hospital concerning Ms. Rondini? 15 A. I don't know. They never 16 documented it if they did. 17 Q. Then you mentioned they should 18 have tested this one sample from the 19 hospital; is that correct? 20 A. Yes. 21 Q. What was that sample? 22 A. I believe it was urine. 23 Q. And what could testing that sample</p>	<p>1 tell? 2 A. It could tell you any number of 3 drugs that were in her system, the amount 4 of alcohol at that point in time in her 5 system. 6 Q. And how would that have affected 7 the outcome of this case or this 8 investigation? 9 A. The outcome? 10 Q. Right. 11 A. Is that what you're -- well, I 12 don't know the outcome. 13 It's -- look, her capacity is part 14 of the case. It's -- it goes back to, you 15 know, her being blacked out and how did 16 she get that way. 17 And it could be any number of 18 things why you would want to test it. I 19 mean, the outcome, who knows. Maybe 20 nothing or it could be the whole thing. 21 It could be the whole case. We don't know 22 because it was never tested. 23 Q. Is it your opinion that</p>
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<p>1 Ms. Rondini was drugged during this time 2 of her allegations -- 3 MS. BOLGER: Object to the 4 form of the question. 5 A. I have no idea. 6 Q. (By Mr. Ritchey) Is there any 7 evidence suggesting that she was drugged? 8 A. No, there is no evidence that she 9 was drugged when it comes to this 10 investigation. 11 I mean, again, I don't -- we don't 12 know. I mean, we'll never know because of 13 the way the investigation was conducted. 14 I mean we just don't know. So I 15 can't, you know, answer that question. 16 Q. How would the amount of alcohol 17 Ms. Rondini had in her system affected the 18 outcome of the case? 19 A. Well, I mean, I know you keep 20 saying outcome, but I think it shows -- 21 the amount of alcohol would show how she 22 ended up, you know, leaving on her own 23 from this bar, not having memory of her</p>	<p>1 going to her apartment. 2 Again, making those choices that 3 she -- that, you know, that she probably 4 wouldn't have if she was sober and if, in 5 fact, she was drunk. 6 So it shows her state of mind and 7 mentality of, you know, having somebody 8 come back to her apartment with her and 9 not -- and having -- and just not being 10 aware of it. 11 It shows her actions at the very 12 beginning of the night of the case 13 throughout, so yeah, I mean you would want 14 to be able to explain those things to a 15 jury as to why she did certain things. 16 Q. Is that an investigator's job to 17 explain those things to a jury? 18 A. Absolutely. Absolutely. It goes 19 back to that behavioral evidence. 20 Q. What do you mean it goes back to 21 the behavioral evidence? 22 A. Well, again, was her plan to show 23 up with nine friends at a bar and then</p>

33 (Pages 129 to 132)

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<p>1 leave by herself?</p> <p>2 You know, does it show that -- I</p> <p>3 mean it shows that, you know, what was she</p> <p>4 thinking by getting into a car and she has</p> <p>5 no memory of getting into that car. She</p> <p>6 just remembers being in the car.</p> <p>7 So when you have all of these, you</p> <p>8 know, what I call strange things that</p> <p>9 happen in these type of sexual assault</p> <p>10 cases, that they need to be explained and</p> <p>11 the jury needs to understand why your</p> <p>12 victim does these odd things.</p> <p>13 And usually it comes back to the</p> <p>14 drugs and alcohol, and in her case, you</p> <p>15 know, more the alcohol.</p> <p>16 Q. What would -- why would you need</p> <p>17 to explain away these strange things, as</p> <p>18 you call it, that Ms. Rondini did</p> <p>19 throughout the night?</p> <p>20 MS. BOLGER: Object to the</p> <p>21 form.</p> <p>22 A. So the jury gets the big picture,</p> <p>23 right. So they understand the whole</p>	<p>1 picture and the truth as to what happens</p> <p>2 and why someone that doesn't know another</p> <p>3 person or other two people invite them</p> <p>4 back to her apartment and then have no</p> <p>5 memory of it.</p> <p>6 So, you know, juries in criminal</p> <p>7 cases are told -- you know, they're given</p> <p>8 jury instructions and they're told</p> <p>9 basically, you know, if you're on the</p> <p>10 fence and you don't know, then you have to</p> <p>11 give the defendant the benefit of the</p> <p>12 doubt, and in these type of cases there's</p> <p>13 always doubt, any case really, but in</p> <p>14 these cases so much more because juries</p> <p>15 have biases.</p> <p>16 So it needs to be explained to</p> <p>17 them and the only way to do that is to</p> <p>18 conduct a detailed, thorough, accurate</p> <p>19 report.</p> <p>20 Q. Would these actions that you're</p> <p>21 calling strange have any bearing on the</p> <p>22 sexual assault case or a rape case?</p> <p>23 MS. BOLGER: Object to the</p>
Page 135	Page 136
<p>1 form.</p> <p>2 I think you're mixing apples</p> <p>3 and oranges. Do you mean Megan Rondini or</p> <p>4 all -- I don't understand the question.</p> <p>5 If you understand, Carl, you</p> <p>6 can answer.</p> <p>7 I don't understand what the</p> <p>8 question is about.</p> <p>9 A. Yeah, I don't know if it's general</p> <p>10 or not.</p> <p>11 Q. (By Mr. Ritchey) Let's be specific</p> <p>12 to Ms. Rondini's allegations and her</p> <p>13 investigation.</p> <p>14 MS. BOLGER: So what's the</p> <p>15 question?</p> <p>16 Q. (By Mr. Ritchey) So what</p> <p>17 significance would her actions earlier in</p> <p>18 the night have on whether or not she was</p> <p>19 raped?</p> <p>20 A. Well, it shows, you know, a</p> <p>21 chronological order of what occurred, her</p> <p>22 mindset, her sobriety.</p> <p>23 Throughout the night you always</p>	<p>1 want to know everything that your victim</p> <p>2 has done before, during, and after an</p> <p>3 assault.</p> <p>4 It's just a complete detailed</p> <p>5 investigation. You know, you don't start</p> <p>6 a joke with the punch line, right? You</p> <p>7 set it up.</p> <p>8 And that's what investigations do.</p> <p>9 You find out what happened and then you</p> <p>10 tell a story.</p> <p>11 Q. You also mentioned that I think in</p> <p>12 the interview the nine people Ms. Rondini</p> <p>13 listed that were at the bar. What could</p> <p>14 those nine people have offered?</p> <p>15 A. Well, they could, you know, they</p> <p>16 could explain or at least give you some</p> <p>17 insight as to how much she had to drink.</p> <p>18 You know, how was she acting from</p> <p>19 the beginning of the night and then until</p> <p>20 the last time she was seen at the bar by</p> <p>21 herself. What was the plan.</p> <p>22 Was the plan to all leave together</p> <p>23 or, you know, did something happen at the</p>

<p style="text-align: right;">Page 137</p> <p>1 bar. You know, she was -- I believe she 2 was in an argument or had gotten into an 3 argument with another female. What was 4 that about? 5 Did Rondini say something to them 6 that, you know, that pointed them to 7 Mr. Bunn or Mr. Barksdale. So there's a 8 lot of information there that just became 9 lost. 10 You know, usually you only have 11 one or two witnesses. Here you had nine. 12 I mean, and they had phone numbers where 13 they could just contact them, so it wasn't 14 like they had to hunt them down. 15 Q. But these witnesses didn't see the 16 alleged rape, did they? 17 A. I would think not, no. 18 Q. And how would that information 19 that could have been obtained from these 20 nine people have affected the course of 21 the Rondini investigation? 22 MS. BOLGER: Object to the 23 form. Asked and answered.</p>	<p style="text-align: right;">Page 138</p> <p>1 You can answer it again, 2 Carl. 3 A. I don't know if it would affect 4 the outcome or not, sir. What I'm saying 5 is they give you the entire picture of 6 what occurred. By not talking to them, I 7 don't know. 8 Maybe they had, you know, good 9 information, maybe they didn't have any 10 information at all, but you've got to go 11 out and talk to them, so we don't know if 12 it would have affected the outcome or not. 13 And the only way we would know 14 that is if Jones or Hastings would have, 15 you know, contacted them. Look, these 16 people were important to Ms. Rondini. 17 She wanted these two investigators 18 to know that these are the people that 19 were with me at the bar that night. 20 Q. And none of them witnessed -- 21 A. I mean, that's why she gave their 22 names and phone numbers to them. 23 Q. But none of them witnessed the</p>
<p style="text-align: right;">Page 139</p> <p>1 alleged rape, did they? 2 A. I don't think any of them was in 3 the room that day, no. But, again, we 4 don't know what information they have. 5 Q. You mentioned that Ms. Rondini may 6 have had an argument with another female 7 at the bar; is that right? 8 A. That's correct. 9 Q. Where did you get that information 10 from? 11 A. I don't recall. I don't recall, 12 sir. I can't remember where I got that 13 from. Let me think about it. It will 14 come to me. 15 Q. Okay. If it does, just let me 16 know and we'll come back to it. 17 A. It will. I will come back to it. 18 Q. Do you remember what the argument 19 was about? 20 A. Again, we don't know because 21 nobody at the bar is spoken to, and 22 Rondini was never -- never volunteered it 23 or asked about it, so I don't know if the</p>	<p style="text-align: right;">Page 140</p> <p>1 female was part of that group or part of 2 somebody else's group or who knows, or if 3 it was an employee. 4 None of those questions were ever 5 asked or answered so, and they should have 6 been. 7 Q. What effect would that have had on 8 the investigation? 9 A. I don't know. I don't know what 10 information they have. I mean, it could 11 have been a big nothing or it could have 12 been very important. 13 I mean did Mr. Bunn hit on one of 14 these other girls. I mean was there a 15 conversation between what I call the nine 16 and Mr. Barksdale or Mr. Bunn. I don't -- 17 I don't know and we'll never know. 18 Q. What would talking to the bar 19 staff or customers have provided to the 20 investigation? 21 A. What -- again, and I keep saying 22 that we don't know because we don't know 23 what information they had.</p>

<p style="text-align: right;">Page 141</p> <p>1 What they possibly could have as</p> <p>2 to Ms. Rondini's her, you know, capacity</p> <p>3 as far as, you know, how much she had to</p> <p>4 drink and was she slurring her speech.</p> <p>5 Did Mr. Bunn say something to the</p> <p>6 bartender about Ms. Rondini.</p> <p>7 I mean, there's a lot of things</p> <p>8 that could have been said. Had Mr. Bunn</p> <p>9 -- was there complaints before by other</p> <p>10 young ladies about him.</p> <p>11 So the information could just run,</p> <p>12 you know, a thousand different things,</p> <p>13 and, again, that's why you want to go out</p> <p>14 and, you know, obtain that, these</p> <p>15 statements from these people.</p> <p>16 Q. What would Bunn saying something</p> <p>17 to one of the bartenders or staff, you</p> <p>18 know, how would that have affected the</p> <p>19 investigation, if he had said something?</p> <p>20 A. I don't know, sir. I mean, if he</p> <p>21 was asking about Ms. Rondini, maybe he</p> <p>22 targeted her. I don't know.</p> <p>23 Q. Is there any evidence that he</p>	<p style="text-align: right;">Page 142</p> <p>1 targeted her?</p> <p>2 A. Of course not, because none of</p> <p>3 these people were talked to. I'm just</p> <p>4 saying that's a possibility, sir.</p> <p>5 I mean, you asked me the question</p> <p>6 so I answered it, but, again, we don't</p> <p>7 know.</p> <p>8 Q. You also mentioned that they</p> <p>9 failed to dump Bunn's phone. What could</p> <p>10 Bunn's phone have provided the</p> <p>11 investigation?</p> <p>12 A. It could have maybe shown that he</p> <p>13 was texting about Rondini or maybe he had</p> <p>14 prior plans that he was canceling things</p> <p>15 because of Rondini or maybe he was texting</p> <p>16 to Barksdale.</p> <p>17 You know, some people text to</p> <p>18 people right next to them. Again, we</p> <p>19 don't know because his phone wasn't dumped</p> <p>20 so.</p> <p>21 But it is a possibility that, you</p> <p>22 know, that he had mentioned her or</p> <p>23 something to do with what was happening</p>
<p style="text-align: right;">Page 143</p> <p>1 inside the bar or even afterwards that</p> <p>2 he's texting to a person, but, again, we</p> <p>3 don't know.</p> <p>4 Q. And how would that affect the</p> <p>5 investigation?</p> <p>6 A. Again, we don't know. And I keep</p> <p>7 saying that. It's just part of the</p> <p>8 problem with this investigation is all</p> <p>9 this information that was just not</p> <p>10 collected, just, you know, makes it</p> <p>11 incomplete and not detailed.</p> <p>12 I mean to answer your question, I</p> <p>13 don't know. Maybe it doesn't, maybe it</p> <p>14 doesn't. I don't know.</p> <p>15 Q. And correct me if I'm wrong, I</p> <p>16 think you said some second tier witnesses</p> <p>17 could have told investigators how</p> <p>18 Ms. Rondini felt or acted; is that</p> <p>19 correct? Did I say that right?</p> <p>20 A. I don't think I said felt. I</p> <p>21 think I said her, maybe her -- you know,</p> <p>22 if she had her faculties, I mean, was she,</p> <p>23 you know, speaking with slurred speech,</p>	<p style="text-align: right;">Page 144</p> <p>1 that type of thing.</p> <p>2 Q. Okay. From your review of</p> <p>3 everything that you've listed in your</p> <p>4 materials, could you tell if Ms. Rondini</p> <p>5 had a decrease in her use of faculties?</p> <p>6 MS. BOLGER: Object to the</p> <p>7 form. Ever? Or at what point?</p> <p>8 Q. (By Mr. Ritchey) Any point during</p> <p>9 anything you've reviewed as far as this</p> <p>10 case is concerned?</p> <p>11 A. Okay, I didn't hear the very end</p> <p>12 of that question, though, Mr. Ritchey.</p> <p>13 I'm sorry.</p> <p>14 Q. Okay. In what you've reviewed and</p> <p>15 forming your expert opinion what evidence</p> <p>16 is there that Ms. Rondini did not have</p> <p>17 full use of her faculties?</p> <p>18 MS. BOLGER: You mean when</p> <p>19 she said she blacked out? What time are</p> <p>20 you talking about?</p> <p>21 Q. (By Mr. Ritchey) At any point --</p> <p>22 from what he reviewed at any point that</p> <p>23 you told me.</p>

<p style="text-align: right;">Page 145</p> <p>1 A. Well, the fact that she doesn't</p> <p>2 remember going back to her apartment and</p> <p>3 then regains her faculties in the backseat</p> <p>4 of Mr. Bunn's car and she has this very</p> <p>5 large gap of being blacked out and, you</p> <p>6 know, not remembering leaving the bar, you</p> <p>7 know, and that's per her statement, you</p> <p>8 know, her testimonial evidence would be</p> <p>9 the fact that she was blacked out.</p> <p>10 That shows me that she was</p> <p>11 incapacitated and because she said she had</p> <p>12 four, you know, five or six beers I</p> <p>13 believe it was, so, yeah, the fact that</p> <p>14 she was blacked out.</p> <p>15 Q. What does the amount of beers have</p> <p>16 to do with it?</p> <p>17 A. Well, it shows that she had been</p> <p>18 drinking. We don't know the type of beer,</p> <p>19 the alcohol content of it, the size of it.</p> <p>20 We don't know any of that stuff,</p> <p>21 which, again, that's where the bar people</p> <p>22 come in as to how much alcohol she had on</p> <p>23 board.</p>	<p style="text-align: right;">Page 146</p> <p>1 We also don't know if she had any</p> <p>2 depression medicines or anything like that</p> <p>3 because the blood test wasn't taken.</p> <p>4 Q. In your report are you ever</p> <p>5 opining that Ms. Rondini lost</p> <p>6 consciousness or passed out?</p> <p>7 MS. BOLGER: Object to the</p> <p>8 form. The report speaks for itself, but</p> <p>9 you can answer.</p> <p>10 A. No, I don't -- I never said that</p> <p>11 she had passed out.</p> <p>12 Q. (By Mr. Ritchey) You just said a</p> <p>13 blood test was not taken. Whose</p> <p>14 responsibility is it to take a blood test?</p> <p>15 A. In Alabama I don't know. In San</p> <p>16 Diego it's the forensic doing the -- the</p> <p>17 rape kit.</p> <p>18 But I mean I -- you know, when we</p> <p>19 go to those here in San Diego, I don't</p> <p>20 know about Alabama, because I know you're</p> <p>21 going to ask me that, but you have to know</p> <p>22 that blood and urine was taken.</p> <p>23 I mean you think that it would be</p>
<p style="text-align: right;">Page 147</p> <p>1 standard and sometimes it's not. That's</p> <p>2 why as an investigator you make sure that</p> <p>3 those, you know, samples are taken and</p> <p>4 also, you know, swabs in different areas.</p> <p>5 That's why you sit and talk, you know,</p> <p>6 with the person collecting that stuff.</p> <p>7 Q. And who taught you to do that?</p> <p>8 A. That's what we do here in San</p> <p>9 Diego. That's the standard. I thought it</p> <p>10 was standard everywhere, right, but --</p> <p>11 Q. Let me ask you this when you're</p> <p>12 mentioning best practices and standard, I</p> <p>13 guess procedure for lack of a better term,</p> <p>14 are you basing that off of what you know</p> <p>15 with the San Diego Police Department only?</p> <p>16 MS. BOLGER: So I'm going to</p> <p>17 object to the form of that question and</p> <p>18 ask you to unpack it.</p> <p>19 You just asked best</p> <p>20 practices and standard procedure. There</p> <p>21 are best practices and there are standard</p> <p>22 operating procedures.</p> <p>23 We've sent Carl the standard</p>	<p style="text-align: right;">Page 148</p> <p>1 operating procedures and he can talk about</p> <p>2 them, but you can't bunch them together.</p> <p>3 So if you want to ask those</p> <p>4 two separate questions, ask them separate,</p> <p>5 but otherwise it's misleading.</p> <p>6 Q. (By Mr. Ritchey) Okay. When</p> <p>7 you're talking about best practices is</p> <p>8 that based on your experience with the San</p> <p>9 Diego Police Department only?</p> <p>10 A. No.</p> <p>11 Q. And what else is it based on?</p> <p>12 A. Well, I mean, I travel all over</p> <p>13 the United States instructing and teaching</p> <p>14 and speaking at conferences.</p> <p>15 I, you know, sat in on other</p> <p>16 trainings, but I also talk to other</p> <p>17 investigators and other instructors who</p> <p>18 are in law enforcement.</p> <p>19 And, you know, when we sit down</p> <p>20 and talk and do these roundtables, you</p> <p>21 know, we talk about all aspects of sexual</p> <p>22 assault and not just these types but other</p> <p>23 types.</p>

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<p>1 And, you know, the standards</p> <p>2 testing that you do are actually, you</p> <p>3 know, the swabs and blood and urine.</p> <p>4 That's just a gimme.</p> <p>5 I would never think that was a</p> <p>6 problem this day and age, but I'm just</p> <p>7 saying and I'm not, you know -- I'm just</p> <p>8 saying that that's kind of a fundamental</p> <p>9 thing that you would do.</p> <p>10 But you are an investigator across</p> <p>11 the nation, you're in charge of that, of</p> <p>12 all aspects of collecting evidence.</p> <p>13 You're the lead investigator.</p> <p>14 Q. And when you're talking about</p> <p>15 standard procedure is that just based on</p> <p>16 your experience with the San Diego Police</p> <p>17 Department?</p> <p>18 A. No. That's actually I mean</p> <p>19 Alabama they have written in there that</p> <p>20 you are responsible for the actual kit</p> <p>21 itself and, you know, what is, you know,</p> <p>22 the type of samples that are taken.</p> <p>23 I believe it says in there that</p>	<p>1 you also take -- for the chain of custody</p> <p>2 you also will take custody of it.</p> <p>3 Q. Did you review Loyd Baker's</p> <p>4 deposition?</p> <p>5 A. I did.</p> <p>6 Q. Do you remember in there when he</p> <p>7 was talking about that provision you just</p> <p>8 spoke about?</p> <p>9 A. Not off the top of my head, sir.</p> <p>10 You can refresh my memory.</p> <p>11 Q. Give me one second.</p> <p>12 A. Sure.</p> <p>13 Q. All right. I am showing you Loyd</p> <p>14 Baker's deposition in this case, and we're</p> <p>15 looking at pages 49 through 52. I've</p> <p>16 highlighted the relevant portions.</p> <p>17 If you need me to scroll up or</p> <p>18 down for reference, I would be happy to do</p> <p>19 so as well, but just let me know when</p> <p>20 you've reviewed that.</p> <p>21 MS. BOLGER: Do you want to</p> <p>22 show him the SOP that you're trying to get</p> <p>23 around or do you just want to show him the</p>
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<p>1 testimony?</p> <p>2 MR. RITCHEY: I just want to</p> <p>3 show him the testimony.</p> <p>4 MS. BOLGER: Actually could</p> <p>5 you make it a little larger?</p> <p>6 A. Yeah, it's kind of small, sorry.</p> <p>7 Q. (By Mr. Ritchey) Is that better?</p> <p>8 A. Yes, a lot better. Thank you.</p> <p>9 Q. And if I need to scroll down more,</p> <p>10 just let me know.</p> <p>11 A. Okay. Can you scroll a little</p> <p>12 bit? Thank you. That's good. Okay.</p> <p>13 Q. Okay. Is this the SOP you were</p> <p>14 talking about?</p> <p>15 MS. BOLGER: Why don't you</p> <p>16 show him the SOP? This is -- object to</p> <p>17 the form. This is not an SOP. You're not</p> <p>18 showing him an SOP.</p> <p>19 Carl, the answer to that</p> <p>20 question is no.</p> <p>21 If you want to show him an</p> <p>22 SOP, show him the SOP. Don't show him</p> <p>23 Baker's testimony.</p>	<p>1 MR. COCKRELL: Katie, let</p> <p>2 him answer the questions and just make</p> <p>3 objections --</p> <p>4 MS. BOLGER: No, you're</p> <p>5 trying to --</p> <p>6 MR. COCKRELL: Put your</p> <p>7 objection on the record and let's -- quit</p> <p>8 clouding the document. Just answer the</p> <p>9 question and object --</p> <p>10 MS. BOLGER: You can't</p> <p>11 answer A question about the SOP looking at</p> <p>12 this document, Carl.</p> <p>13 I direct you not to answer a</p> <p>14 question about the SOP based on this</p> <p>15 document --</p> <p>16 MR. COCKRELL: He can say</p> <p>17 that without -- he can say that without</p> <p>18 you volunteering that information.</p> <p>19 If he wants to see it, he</p> <p>20 can see it, but, you know --</p> <p>21 MS. BOLGER: Carl, you can't</p> <p>22 answer the question that's pending --</p> <p>23 MR. COCKRELL: -- state an</p>

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<p>1 objection without making statements --</p> <p>2 MS. BOLGER: -- Carl, don't</p> <p>3 answer the question that's pending.</p> <p>4 Scotch, you can ask him a</p> <p>5 question that's not about an SOP he's not</p> <p>6 looking at.</p> <p>7 A. I would like to see the SOP.</p> <p>8 Q. (By Mr. Ritchey) Was this not part</p> <p>9 of the SOP that we've been talking about?</p> <p>10 MS. BOLGER: Object to the</p> <p>11 form.</p> <p>12 If you want to ask him a</p> <p>13 question about the SOP, show him the SOP.</p> <p>14 MR. RITCHEY: It has the SOP</p> <p>15 in quotes right there.</p> <p>16 MS. BOLGER: How does he</p> <p>17 know? He doesn't know. This is</p> <p>18 ridiculous. Show him the SOP if you want</p> <p>19 to ask him a question about the SOP.</p> <p>20 MR. RITCHEY: I really want</p> <p>21 to ask him a question about this</p> <p>22 deposition that he's reviewed.</p> <p>23 MS. BOLGER: So then ask him</p>	<p>1 that. Don't ask him if this is part of an</p> <p>2 SOP he doesn't have in front of him.</p> <p>3 MR. COCKRELL: We don't know</p> <p>4 if knows the answer or not because you're</p> <p>5 talking. You didn't give him a chance to</p> <p>6 answer whether he knows it or not, that's</p> <p>7 part of the SOP.</p> <p>8 MS. BOLGER: He's testified</p> <p>9 he saw the SOPs. If you want him to look</p> <p>10 at the SOP and ask him more questions</p> <p>11 about the SOP, show him the SOP.</p> <p>12 If you don't, if you want to</p> <p>13 ask him about what Baker said, ask him</p> <p>14 about what Baker said.</p> <p>15 Q. (By Mr. Ritchey) Let me try this,</p> <p>16 maybe this will work.</p> <p>17 You've reviewed Mr. Baker's</p> <p>18 testimony in this case; right?</p> <p>19 A. Okay, hang on. My screen is</p> <p>20 completely black.</p> <p>21 Q. Okay.</p> <p>22 A. Something flashes and that's it.</p> <p>23 MS. BOLGER: Scotch, try</p>
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<p>1 unsharing and re-sharing. Maybe that will</p> <p>2 fix it.</p> <p>3 THE WITNESS: There you go.</p> <p>4 I got it.</p> <p>5 MS. BOLGER: Now, try</p> <p>6 re-sharing. How's that?</p> <p>7 THE WITNESS: That's good,</p> <p>8 perfect.</p> <p>9 Q. (By Mr. Ritchey) All right. So</p> <p>10 you have reviewed this testimony of</p> <p>11 Mr. Baker; right?</p> <p>12 A. Yes.</p> <p>13 Q. Does this testimony change your</p> <p>14 opinion concerning whether under the SOP</p> <p>15 Jones or Hastings were tasked with</p> <p>16 collecting blood sample or making sure a</p> <p>17 blood sample was taken at the hospital?</p> <p>18 A. Are you saying does it change my</p> <p>19 testimony -- or my report; is that what</p> <p>20 you're saying?</p> <p>21 Q. Yeah, your report or your opinion.</p> <p>22 A. No, it doesn't.</p> <p>23 Q. And why not?</p>	<p>1 A. Because the lead investigator is</p> <p>2 responsible for all aspects of the</p> <p>3 evidence collecting, and if you don't --</p> <p>4 you know, he's not, you know, we're not</p> <p>5 trained to collect it ourselves, so you</p> <p>6 have to make sure that it is collected,</p> <p>7 and that's why you get more information at</p> <p>8 the hospital from your victim, from</p> <p>9 Ms. Rondini, and then speak with the</p> <p>10 person that's collecting, saying hey, this</p> <p>11 person ejaculated on her arm or her leg,</p> <p>12 swab there.</p> <p>13 She at one point was, you know,</p> <p>14 blacked out or passed out, so, therefore,</p> <p>15 we'll need blood and urine. So if the</p> <p>16 lead investigator is not communicating</p> <p>17 with the person collecting any evidence,</p> <p>18 then, you know, there could be evidence</p> <p>19 lost, or at least relevant evidence, and</p> <p>20 you may even collect things that you don't</p> <p>21 need.</p> <p>22 So, you know, sir, my opinion is</p> <p>23 that the lead investigator is in charge of</p>

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<p style="text-align: right;">Page 157</p> <p>1 all aspects of the evidence. 2 Q. Okay. And then what if the 3 hospital doesn't collect a blood sample? 4 A. That should have been caught 5 immediately by, you know, Jones. I mean 6 he should have caught that immediately. 7 MS. BOLGER: We've been 8 going like an hour and 15, Scotch, if 9 there's a break in your outline soon, 10 let's have a break. We can go a little 11 longer, I don't need one right now, but 12 just at next break please give us a high 13 sign. 14 MR. RITCHEY: Okay, I'll let 15 you know. 16 Q. And what standard are you basing 17 that he should have collected or told the 18 hospital to collect the blood sample on? 19 A. That's just standard across the 20 board. I mean, again, no matter what type 21 of crime that you're investigating, it 22 could be a homicide, it doesn't matter, 23 the lead investigator oversees the entire</p>	<p style="text-align: right;">Page 158</p> <p>1 investigation and is responsible for 2 evidence that needs to be collected or 3 tested. 4 Q. Is there one standard procedure 5 that governs all law enforcement agencies? 6 A. No, not that I'm aware of. 7 Q. Does each law enforcement agency 8 implement their own standard procedure? 9 MS. BOLGER: Object to the 10 form. 11 If you know the answer to 12 that question, which is huge, you can 13 answer it. 14 A. I just know, I mean I just know 15 San Diego PD how we do it. And, you know, 16 most agencies kind of steal each other's 17 ideas if you will. 18 I'm sure some agencies have 19 different procedures, but again, the one 20 thing that doesn't change and that is the 21 lead investigator is responsible for the 22 collection and the testing of the evidence 23 in the case. That's why you have a lead</p>
<p style="text-align: right;">Page 159</p> <p>1 investigator. 2 Q. (By Mr. Ritchey) How do you know 3 that doesn't change? 4 A. From agency to agency? 5 Q. Right. 6 A. Because it's just investigations 7 101. I mean it's just, you know, for 8 hundreds of years there's been lead 9 investigators and, you know, you're the 10 one that's going testify to the bulk of 11 your investigation and, you know, in 12 court. 13 If you have five people and you 14 all know five different things and it's 15 not funneled into one person, this is 16 where we get into investigations like this 17 that is, you know, not detailed, 18 professional or accurate. 19 You know, that's why you have lead 20 investigators, and that's, you know, you 21 put a thousand investigators in a room, 22 they're all going to tell you the same 23 thing. You have to have a lead</p>	<p style="text-align: right;">Page 160</p> <p>1 investigator. 2 Q. Is there one set of best practices 3 that govern all law enforcement agencies? 4 MS. BOLGER: Object to the 5 form. Asked and answered. 6 A. As it comes to exams at the 7 hospital. What are you asking? 8 Q. (By Mr. Ritchey) Just in any case 9 is there one set of best practices in any 10 case that would govern all law enforcement 11 agencies? 12 A. Yes. 13 Q. What are those? 14 A. That's just common sense 15 investigation. I mean they're not written 16 down, I wouldn't think, but an 17 investigation in San Diego or New York or 18 Seattle or Alabama all have a very basic 19 start and finish to them such as, you 20 know, the interviewing, the collection of 21 evidence, how you handle crime scene, all 22 those are standard across the board. 23 Q. But there's no one written set of</p>

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<p>1 best practices that govern all law 2 enforcement agencies? 3 MS. BOLGER: Object to the 4 form of the question. 5 A. No, sir, there's not one big thick 6 book that we're all handed out, so no, 7 it's not written down under one, you know, 8 policy and procedure for everybody across 9 the nation. There is a basic aspect to 10 each one of those and some of them will 11 vary. 12 Q. (By Mr. Ritchey) I want to go 13 back. You said Jones or Hastings should 14 have gone back to a taxi cab driver for 15 some sort of clarification. 16 Did I say that right? 17 A. Yes. 18 Q. Who took the taxi cab driver's 19 statement, if you know, off the top of 20 your head? 21 A. I can't remember. 22 Q. Was it Jones or Hastings, if you 23 know?</p>	<p>1 A. I don't think so. 2 Q. And what kind of clarification 3 could they have gotten out of the taxi cab 4 driver? 5 A. Well, again, they could have got 6 his demeanor -- I'm sorry, her demeanor, 7 how she was acting, you know, was she 8 nervous, was she acting scared, you know, 9 immediately when she got into the cab what 10 did she say to you. 11 The biggest thing with the cab 12 driver is this money, this cash money that 13 she gave him to pay for the cab. 14 Now, when she sees her friends 15 come down the road she says oh, there's my 16 friends. She gives him some cash, and he 17 says, no, you have to pay for it and she 18 gives him some cash. 19 It's never stated how much cash 20 did she give him. Now, did the cab cost 21 \$27 and some odd cents, the cash that she 22 gave him was that not enough, is that why 23 she paid with her credit card.</p>
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<p>1 I mean, there's a lot of things 2 that, you know, at least to that aspect of 3 what I would want to know, to go back and 4 clarify that with him. 5 Q. And what kind of bearing would 6 that have had on Ms. Rondini's allegations 7 and the investigations of those? 8 A. Well, again, it would have 9 corroborated that she did call a cab and 10 that she paid for it with her credit card. 11 The other is, you know, she's -- 12 she was being accused of stealing well 13 different kinds -- different amounts of 14 money. I think one was \$200 and then -- 15 it was listed as \$200 in a report and then 16 Mr. Bunn said it was \$300. 17 I think as investigator, I mean, 18 the outcome of that would be that you 19 would want to either contradict or 20 corroborate that she had taken that money 21 and as to the amount of it. 22 Now, you know, she gets in the 23 cab. She gives him again cash, we don't</p>	<p>1 know how much. When she's told it's \$27 2 she takes the cash back and then pays for 3 it with her debit card or credit card or 4 whatever it is. 5 It seems to me if she had two or 6 \$300 cash, she wouldn't have had to use 7 her credit card. I mean right, she just 8 took two, \$300 worth of cash in her hand, 9 you just pay the cab cash. 10 Q. And how -- 11 A. And so -- I was going to say that 12 could have changed the aspect or the 13 outcome of at least how much did she 14 supposedly taken. 15 Q. Okay. Could any of that tell us 16 whether or not Ms. Rondini was raped? 17 A. No, I wouldn't think so. 18 MR. RITCHEY: I think we're 19 getting into another aspect of the report, 20 if we want to take a break, it would be a 21 good time to do so. 22 MS. BOLGER: Okay. Can I 23 just ask you so it's 2:20 in New York and</p>

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<p>1 God only knows what time it is anywhere 2 else in the world because we just changed 3 our clocks. 4 How -- do we want to take 5 like a break long enough to eat? How much 6 longer do you want to go? What kind of 7 break do you want to do, Scotch? 8 MR. RITCHEY: I think a 9 lunch break is good. I've got quite a few 10 to go through. 11 MS. BOLGER: Just in terms 12 of timing how much longer do you think you 13 have, and as Bob always says I'm not going 14 to hold you to it but I wondered how much 15 time you have. 16 MR. RITCHEY: It's a 40-page 17 report and there's, you know, quite a few 18 questions I have about it, so it may be a 19 good bit into the afternoon. 20 MS. BOLGER: Okay. I feel 21 that was very imprecise. So what time do 22 you want to come back? 23 MR. RITCHEY: You want to</p>	<p>1 say an hour? 45 minutes? 2 MR. COCKRELL: Let's try 3 45 minutes. 4 MS. BOLGER: I don't want to 5 take an hour, sorry, no. So half an hour 6 is fine. 7 MR. COCKRELL: A half hour? 8 MR. RITCHEY: A half hour? 9 Okay. 10 VIDEOGRAPHER: Off the 11 record at 1:23 p.m. 12 (Recess was taken.) 13 VIDEOGRAPHER: Back on the 14 record at 2:00 p.m. 15 Q. (By Mr. Ritchey) Mr. Hershman, I'm 16 going to bring up your expert report again 17 and we're on page 10. 18 I'm looking at the first full 19 paragraph that starts, initially every 20 case no matter what type. 21 Do you see where I am? 22 A. I see it, yes. 23 Q. And you list a few goals out there</p>
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<p>1 and then underneath it you say 2 investigator should be trained and 3 competent in obtaining these goals. 4 Who would be responsible for 5 training an investigator in these goals? 6 A. I guess their perspective police 7 department. 8 Q. And in this you talk a lot about 9 corroborating or contradicting what people 10 tell an investigator. 11 Does corroboration always make 12 someone tell or someone -- let me rephrase 13 that. 14 Does corroboration make people 15 truth tellers? 16 MS. BOLGER: Object to the 17 form of the question. That's not what the 18 word means. 19 Go ahead. 20 A. It can make them a truth teller, 21 if they're stating -- if they make a 22 statement and you're able to corroborate 23 it, then, you know, that person told the</p>	<p>1 truth, at least about that aspect of it. 2 Q. (By Mr. Ritchey) Is the opposite 3 true if you find contradicting evidence, 4 it makes a person a liar or how would you 5 say that? 6 MS. BOLGER: Object to the 7 form. He didn't say that. 8 A. No, that -- I didn't say that. 9 You're thinking of inconsistent 10 statements. 11 I think that's when you're not 12 able to -- look, you can't corroborate 13 every statement or aspect of a case but, 14 you know, all cases have inconsistencies 15 on some level. 16 Q. (By Mr. Ritchey) Why can sexual 17 based investigations not be treated like 18 other types of investigations? 19 A. Well, they have their own unique 20 dynamic, so investigators often look for 21 credibility issues when someone is 22 speaking with them and that could be a 23 victim, suspect, witness, and, you know,</p>

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<p>1 most of those witnesses and suspects and 2 victims when there is, you know, kind of 3 some standard things that they say or do 4 where you think their credibility is 5 lacking. 6 In sexual assault cases it's 7 completely different, so because sexual 8 assault victims do some things that would 9 be considered a red flag and actually 10 they're just a dynamic of a sexual 11 assault, those things that we had talked 12 about earlier about just doing what I say 13 are weird things, which if they would do 14 in other cases, it would cause you 15 concern. 16 But in sexual assault cases 17 because of the type of crime it is, that 18 it's not a red flag. In fact, delayed 19 reporting is a very common thing. 20 Where in most other cases delayed 21 reporting is not an issue. That's just 22 one, one example. 23 Q. Okay. Where did you learn all of</p>	<p>1 that? 2 A. Over 1300 cases, so I learned by 3 on-the-job training, my experiences. 4 Again, End Violence Against Women are very 5 knowledgeable. I learned that also from 6 those trainings and teachings. 7 Q. Is training the foundation of 8 success in a sexual assault or rape 9 investigation? 10 A. I'm sorry, Mr. Ritchey, could you 11 repeat that? 12 Q. Is training the foundation of 13 success in a sexual assault or rape 14 investigation? 15 A. It's part of it, yes. 16 Q. What are other parts of it? 17 A. Your experiences, learning -- when 18 you say training I assume that you're 19 talking maybe in a classroom setting, but 20 also training from, you know, on-the-job 21 training and people that do know that can 22 help you. 23 I'm going to close my window real</p>
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<p>1 quick here, okay, because I'm having a 2 hard time hearing you, okay? 3 Q. Okay. 4 A. Okay. Much better. Sorry about 5 that. 6 Q. That's fine. 7 Did you have anything to add or 8 were you done? 9 A. I don't think so, no. I'm done. 10 Q. All right. We're looking at 11 page 11 of your report. Here you say most 12 victims do not physically resist. They 13 report after a delay and provide 14 information as incomplete, inconsistent, 15 or even untrue. 16 Where did you learn that most 17 victims do these three things? 18 A. Through my cases and also through 19 other sex crimes investigators. 20 Q. Were those other sex crimes 21 investigators in the San Diego Police 22 Department? 23 A. Most of them were, yes, but also</p>	<p>1 outside. 2 Q. Were there any from Alabama that 3 you learned from? 4 A. Not that I know of, no. 5 Q. All right. In the middle of this 6 first full paragraph on page 11, you 7 reference common and well-known 8 investigative tools and practices. Do you 9 see where I'm at? 10 MS. BOLGER: Let Carl catch 11 up to you please, and, Carl, please feel 12 free to read around it. 13 A. Yes, I see it. 14 Q. (By Mr. Ritchey) What are these? 15 A. The common and well-known 16 investigative tools or practices? 17 Q. Right. 18 A. Yes, the proper interviewing, 19 understanding the real dynamics of sexual 20 assault. 21 Best practices is, you know, to 22 not shut down your investigation because 23 your victim had said or done something</p>

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<p>1 wrong, to start by believing at the</p> <p>2 beginning of your -- of the investigation.</p> <p>3 Understanding the dynamics, mainly</p> <p>4 the delayed reporting, and understanding</p> <p>5 that there's going to be inconsistent or</p> <p>6 incomplete or even untrue statements.</p> <p>7 Q. And where did you learn these?</p> <p>8 A. Again, in my office after nine and</p> <p>9 a half years and doing training or</p> <p>10 conducting trainings and also sitting in</p> <p>11 on trainings.</p> <p>12 Q. And then the last paragraph on</p> <p>13 this report you list a few things that you</p> <p>14 say Jones and Hastings did not undertake</p> <p>15 to have a sufficient investigation.</p> <p>16 Just want to kind of go through</p> <p>17 these. What evidence did they fail to</p> <p>18 collect?</p> <p>19 MS. BOLGER: Where are you?</p> <p>20 That's not the first one I have. I'm just</p> <p>21 confused.</p> <p>22 You mean number one, failed</p> <p>23 to follow necessary leads, including</p>	<p>1 relevant witnesses and collecting</p> <p>2 evidence? You're asking about the</p> <p>3 evidence portion?</p> <p>4 MR. RITCHEY: Correct.</p> <p>5 MS. BOLGER: Okay, sorry.</p> <p>6 Q. (By Mr. Ritchey) I think we've</p> <p>7 already discussed all the witnesses; is</p> <p>8 that correct, Mr. Hershman?</p> <p>9 A. I believe so, yes.</p> <p>10 Q. Okay.</p> <p>11 MS. BOLGER: As you said,</p> <p>12 it's a 40-page report.</p> <p>13 MR. RITCHEY: I'm sorry?</p> <p>14 MS. BOLGER: As you said,</p> <p>15 there's 40 pages of report that he also</p> <p>16 said things in, but, go ahead, Carl.</p> <p>17 A. Yes, so I mean what they failed to</p> <p>18 collect obviously interviewing the</p> <p>19 relevant witnesses we spoke about that.</p> <p>20 Obtaining a full sexual assault</p> <p>21 exam from Ms. Rondini. Failure to collect</p> <p>22 a sexual assault exam from Mr. Bunn.</p> <p>23 Then testing of those exams and</p>
Page 175	Page 176
<p>1 the samples or anything like that. And</p> <p>2 then the data dump from Bunn's cell phone.</p> <p>3 Q. (By Mr. Ritchey) What could a</p> <p>4 sexual exam from Bunn tell the</p> <p>5 investigators?</p> <p>6 A. It could show that there was some</p> <p>7 type of sexual contact between him and</p> <p>8 Ms. Rondini and maybe even the type of</p> <p>9 sexual contact.</p> <p>10 Q. What do you mean by type?</p> <p>11 A. Well, say if the proper swabs were</p> <p>12 taken, they would swab his finger to see</p> <p>13 if maybe he had inserted his finger inside</p> <p>14 of her vagina, swab his lip and mouth area</p> <p>15 or chin area to see if he had orally</p> <p>16 copulated her. There would have been her</p> <p>17 secretions also possibly on his penis.</p> <p>18 Q. Did either Mr. Bunn or Ms. Rondini</p> <p>19 dispute that sex had occurred?</p> <p>20 A. Well, at that point no, but in my</p> <p>21 experience a lot of times these guys will</p> <p>22 say yes, we had consensual sex and then</p> <p>23 come the 11th hour prior to going to a</p>	<p>1 preliminary hearing or into trial, they'll</p> <p>2 say no, we didn't, I didn't have sex with</p> <p>3 her at all.</p> <p>4 And now, you know, scientifically</p> <p>5 if you will, you cannot, you know, prove</p> <p>6 that they did. So, again, it goes back to</p> <p>7 corroborating what people tell you. If a</p> <p>8 victim tells you hey, he orally copulated</p> <p>9 me, then we had that swab and so on and so</p> <p>10 forth, finger or penis.</p> <p>11 You know, Mr. Bunn had made a</p> <p>12 comment that he wore a condom and didn't</p> <p>13 ejaculate, he ejaculated and didn't wear a</p> <p>14 condom, and, so, again, we try to get to</p> <p>15 the truth, right.</p> <p>16 We want to discover the truth, and</p> <p>17 if we can do that forensically, great. If</p> <p>18 you are going to depend on two separate</p> <p>19 people saying what had happened and they</p> <p>20 were both either at that point or at some</p> <p>21 point under the influence of alcohol,</p> <p>22 you're not -- you may not get exactly the</p> <p>23 big picture of what happened in that</p>

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<p>1 bedroom.</p> <p>2 The other thing that they failed</p> <p>3 to collect was his clothes from the night</p> <p>4 before or the night that it occurred and</p> <p>5 they could have done that, you know,</p> <p>6 through an arrest and they could have had</p> <p>7 him processed that way.</p> <p>8 You could have gotten, you know,</p> <p>9 forensics from his clothes. Now, we don't</p> <p>10 know what he was wearing because, you</p> <p>11 know, Ms. Rondini was never asked.</p> <p>12 That was one of the questions that</p> <p>13 should have been asked at the hospital as</p> <p>14 to what he was wearing, so I mean if</p> <p>15 they're going to go do a search, they need</p> <p>16 to know what to collect.</p> <p>17 The other thing is once they were</p> <p>18 at the house, he could have pointed to any</p> <p>19 of the pants laying there or shirt and</p> <p>20 said, yes, that's what I was wearing, so</p> <p>21 there's another misstep.</p> <p>22 The other is at least boxer shorts</p> <p>23 that he was wearing when they showed up to</p>	<p>1 conduct that search. There could have</p> <p>2 been transfer from his penis to the inner</p> <p>3 part of his underwear and they didn't</p> <p>4 collect that either.</p> <p>5 Q. Would any of that evidence been</p> <p>6 able to tell investigators whether or not</p> <p>7 a rape had occurred?</p> <p>8 A. No.</p> <p>9 Q. How did they fail to properly</p> <p>10 interview Ms. Rondini at the hospital?</p> <p>11 A. Well, you know, she mentions that</p> <p>12 she had been held down and they really</p> <p>13 needed to drill down on that.</p> <p>14 They should have got into that</p> <p>15 further as to when it happened, how it</p> <p>16 happened, how hard did he hold you down.</p> <p>17 They should have got into that a lot more.</p> <p>18 And then again, as to what Mr. Bunn was</p> <p>19 wearing.</p> <p>20 Now, that first interview</p> <p>21 obviously you're gathering some quick</p> <p>22 information, I understand that. It's not</p> <p>23 a sit down, you know, drag out interview</p>
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<p>1 of her.</p> <p>2 However, in my opinion it was way</p> <p>3 too short. I mean there was a lot of</p> <p>4 other things that, you know, there's other</p> <p>5 things that they could have asked such as</p> <p>6 what he was wearing.</p> <p>7 Also, you know, her state of mind</p> <p>8 as to what was occurring in there, and I</p> <p>9 say that because she suffered from trauma</p> <p>10 so there's going to be a lot of things</p> <p>11 that she doesn't remember. There's going</p> <p>12 to be a lot of things that happened in</p> <p>13 that room that she's not going to be aware</p> <p>14 of.</p> <p>15 So like her missing shirt, I mean,</p> <p>16 it would have been simple just to ask her,</p> <p>17 do you have all -- do you have your purse,</p> <p>18 do you have your wallet, do you have your</p> <p>19 keys, do you have your phone. Are you</p> <p>20 missing anything.</p> <p>21 And from what I understand to this</p> <p>22 day that shirt was never found, which is</p> <p>23 very odd to me.</p>	<p>1 Q. Would the shirt be able to tell us</p> <p>2 whether or not she had been raped?</p> <p>3 MS. BOLGER: Object to the</p> <p>4 form of the question.</p> <p>5 A. No, it wouldn't have.</p> <p>6 MR. COCKRELL: Is that a no?</p> <p>7 Q. (By Mr. Ritchey) Was that a no?</p> <p>8 A. That is a no. Yes, that is a no.</p> <p>9 Q. Couldn't the investigators have</p> <p>10 been assessing her state of mind while</p> <p>11 they were asking these questions and</p> <p>12 that's why the questions were asked and</p> <p>13 the length of time was so short on this</p> <p>14 interview?</p> <p>15 MS. BOLGER: Object to the</p> <p>16 form of the question.</p> <p>17 A. I don't think they asked her any</p> <p>18 state of the mind questions if I recall.</p> <p>19 Q. (By Mr. Ritchey) Well, can they</p> <p>20 see how she looked?</p> <p>21 MS. BOLGER: Object to the</p> <p>22 form of the question. You're asking him</p> <p>23 to speculate about what the investigators</p>

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<p>1 were thinking when they -- that's not an 2 expert opinion. You're just asking him to 3 speculate. 4 Q. (By Mr. Ritchey) I'm just saying 5 couldn't that have been a consideration of 6 why this interview was so short, as you 7 say it? 8 MS. BOLGER: Again, you're 9 asking -- that's a question asking him to 10 opine on the state of mind of the 11 investigators. 12 He's here to give you an 13 expert opinion on the quality of the 14 investigation, not their state of mind. 15 Carl, if you feel qualified 16 to talk about what the investigators were 17 thinking in their head, you can do that 18 but that is what that question is calling 19 for. 20 A. I don't know why it was short. I 21 mean, they might have thought they had 22 enough but they didn't, so. 23 Q. (By Mr. Ritchey) What were they</p>	<p>1 missing? 2 MS. BOLGER: Object to the 3 form. Asked and answered. 4 A. That she was held down? I mean 5 that is so important to know why she 6 thought that and how she thought that. 7 And that, you know, that is 8 something that would later come up with 9 Mr. Bunn, but at that point in time you 10 have to determine, you know, what type of 11 sexual assault investigation am I 12 conducting here. 13 I mean is it a drunk, you know, or 14 drunk by intoxication, is it a force or 15 fear. That's going to tell you what kind 16 of actions you're going to have and what 17 type of process you're going to have in 18 your investigation. 19 Q. Did Jones or Hastings bring 20 Ms. Rondini to the police station for the 21 second interview? 22 A. Did they bring her there -- 23 Q. Right.</p>
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<p>1 A. -- is that what you're asking? I 2 don't know -- did they actually drive her; 3 is that what you're asking me, sir? 4 Q. Right. 5 A. I don't know. 6 Q. Was Ms. Rondini forced to submit 7 to that second interview? 8 MS. BOLGER: Object to the 9 form of the question. You mean did the 10 police call her at least four times? Does 11 that qualify as forcing? 12 MR. RITCHEY: I didn't ask 13 that question. 14 MS. BOLGER: Come on. What 15 do you mean by force? Did they detain 16 her? What's the question? 17 Q. (By Mr. Ritchey) Basically, did 18 they detain her? 19 MS. BOLGER: No, they did 20 that two hours later, Scotch. Come on, 21 you know they didn't detain her. 22 MR. COCKRELL: That's not 23 true either. Let him answer the question,</p>	<p>1 Kate. We're not taking your deposition; 2 we're taking his. 3 MS. BOLGER: Don't try to 4 trick him. 5 Carl, go ahead. 6 Q. (By Mr. Ritchey) I'm not trying to 7 trick him. 8 MR. COCKRELL: We're not 9 tricking him. We're asking questions he 10 can answer. He's an expert. 11 MR. RITCHEY: He's 12 insinuating that these investigators 13 forced Ms. Rondini to the police station 14 without -- 15 MS. BOLGER: He's not 16 insinuating anything. He's never said 17 anything about force. The only person 18 that's ever said the word force is you. 19 MR. COCKRELL: You can 20 answer the question, if that's an 21 objection. 22 MS. BOLGER: If the question 23 is did they force her to come to the</p>

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<p>1 police station. Carl, you go right ahead 2 and answer that. 3 A. Mr. Ritchey, I have no idea. If 4 they forced her or not, I have no idea, 5 and I don't know why you think I 6 insinuated that, sir. I don't -- is it 7 something I said that -- 8 MS. BOLGER: Carl, there's 9 no pending question -- there's no pending 10 question -- 11 THE WITNESS: Yeah -- 12 MS. BOLGER: You can ask him 13 a question, Scotch. 14 Q. (By Mr. Ritchey) Number three you 15 said the investigators failed to allow 16 Rondini the opportunity to eat or sleep 17 before bringing her to the police station, 18 that's why I'm asking those questions. 19 It sounds like they just took her 20 from wherever she was into the police 21 station and for some, I don't know, 22 somehow they stopped her from eating or 23 sleeping.</p>	<p>1 MS. BOLGER: Stop right now. 2 Carl is perfectly prepared to answer 3 questions about the words he put on his 4 page -- 5 MR. RITCHEY: It's on his 6 page. 7 MS. BOLGER: -- he's not 8 going to answer questions about what you 9 think he asked, what you think he means. 10 That seems to be kind of a problem in this 11 lawsuit. 12 The words he used were that 13 they failed to allow Rondini the 14 opportunity to sleep or eat before 15 bringing her to the police station. Ask 16 him what he meant by that. Don't ask him 17 about force. 18 MR. RITCHEY: That's what 19 I'm trying to do, if you would let me. 20 MS. BOLGER: Ask the 21 question then; use his words. 22 Q. (By Mr. Ritchey) Okay. You said 23 they failed to allow Rondini the</p>
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<p>1 opportunity to sleep or eat before 2 bringing her to the police station. 3 What did you mean by that? 4 A. That they should have let a break 5 occur between the examination and allowing 6 her to have at least three to four hours 7 of rest and some food before they start 8 their in-depth investigation -- or 9 interview. 10 Q. What do you mean allow? 11 A. An opportunity or they should 12 have -- I mean, I don't know what the one 13 word means to you, but they didn't allow 14 her to do it. 15 Did she ask to do it? I have no 16 clue. There's nothing in this, you know, 17 that I've read. I guess I'm looking at it 18 as more that you should allow somebody to 19 have the opportunity. 20 Q. How do you know the investigators 21 did not allow it? 22 A. They never said. I mean in the 23 report they never said we gave her the</p>	<p>1 opportunity to rest but she demanded to 2 come in. I mean, none of that stuff is in 3 the report. 4 Q. So just because it's not in the 5 report, it doesn't happen? 6 MS. BOLGER: And also it 7 didn't happen, Scotch. Don't mislead the 8 witness. 9 Q. (By Mr. Ritchey) I mean there was 10 a gap in time. I'm just not sure where 11 you got that they didn't allow this to 12 happen is what I'm trying to get to. 13 MS. BOLGER: He told you. 14 MR. RITCHEY: I don't think 15 he did -- 16 MS. BOLGER: -- objection, 17 if you have another question, you can ask 18 the question -- 19 MR. COCKRELL: -- I don't 20 think he did -- 21 MS. BOLGER: -- and first of 22 all, Bob, it's not your deposition. I'm 23 done with this double teaming, so pick a</p>

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<p>1 team, boys --</p> <p>2 MR. COCKRELL: -- and I'm</p> <p>3 tired of you leading the --</p> <p>4 MS. BOLGER: -- second of</p> <p>5 all, Scotch, if you would like to ask a</p> <p>6 question, ask a question, but you're not</p> <p>7 asking a question. He's told you the</p> <p>8 answer to that question.</p> <p>9 If you'd like to ask it</p> <p>10 again, I'll let him answer it again, but</p> <p>11 ask a question.</p> <p>12 MR. COCKRELL: Okay. He can</p> <p>13 answer it again. Go, Scotch.</p> <p>14 Q. (By Mr. Ritchey) Again --</p> <p>15 MS. BOLGER: There's no</p> <p>16 pending question. Ask a question.</p> <p>17 Q. (By Mr. Ritchey) How did they fail</p> <p>18 to allow Rondini the opportunity to either</p> <p>19 eat or sleep before bringing her to the</p> <p>20 police station?</p> <p>21 A. Look, from the time -- I don't</p> <p>22 know what they said to her or offered her,</p> <p>23 I don't know, because it's not written</p>	<p>1 down that that happened.</p> <p>2 Of course, I mean we don't know</p> <p>3 because -- and we'll never know because</p> <p>4 she's not obviously around, so I mean to</p> <p>5 ask that question to.</p> <p>6 But from the time that she is, you</p> <p>7 know, at the hospital and the time that</p> <p>8 she walks, you know, that she is</p> <p>9 interviewed, there's very little time in</p> <p>10 between.</p> <p>11 So I mean one can, you know, you</p> <p>12 know, estimate that she didn't have that</p> <p>13 opportunity. Was she given it? I don't</p> <p>14 know, I don't know.</p> <p>15 Q. All right. Number four you said</p> <p>16 they failed to arrest Bunn. What evidence</p> <p>17 would support an arrest?</p> <p>18 A. Probable cause --</p> <p>19 MS. BOLGER: It actually --</p> <p>20 it actually reads failed to arrest Bunn</p> <p>21 and remove him from his home.</p> <p>22 Q. (By Mr. Ritchey) Okay, you're</p> <p>23 right.</p>
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<p>1 What would support the arrest?</p> <p>2 A. Okay. The answer is probable</p> <p>3 cause. They had probable cause to arrest</p> <p>4 him.</p> <p>5 Q. What would support the probable</p> <p>6 cause?</p> <p>7 A. Her statement that she had been</p> <p>8 sexually assaulted.</p> <p>9 Q. Is that the only support?</p> <p>10 A. At that point, yes. At that point</p> <p>11 in time. I mean, and the fact that he</p> <p>12 lied to them when they came to the door.</p> <p>13 That's kind of a big issue.</p> <p>14 Q. Number four, you said they failed</p> <p>15 to obtain a search warrant for Bunn's</p> <p>16 home. What point in time do you mean?</p> <p>17 A. When they arrived there. They</p> <p>18 should have arrested him when he came to</p> <p>19 the door and then sat him in the car in</p> <p>20 handcuffs, obtained a court-ordered search</p> <p>21 warrant and searched the house.</p> <p>22 Q. Based on her statements only?</p> <p>23 MS. BOLGER: And the lie; he</p>	<p>1 just testified to that.</p> <p>2 Q. (By Mr. Ritchey) Well, he wouldn't</p> <p>3 have been able to -- the investigators</p> <p>4 wouldn't have been able to talk to Bunn if</p> <p>5 they already had an arrest warrant to go</p> <p>6 into the house.</p> <p>7 A. No, sir. You can make an arrest</p> <p>8 and then get a search warrant. You</p> <p>9 understand what I'm saying?</p> <p>10 Q. Let me try to see if I get this.</p> <p>11 Are you saying in that -- was it number</p> <p>12 four, I'm sorry, there are two number 4s.</p> <p>13 The one that says failed to obtain</p> <p>14 a search warrant for Bunn's home. I'm</p> <p>15 looking at that number.</p> <p>16 Are you saying they should have</p> <p>17 obtained a search warrant before showing</p> <p>18 up at Bunn's home?</p> <p>19 A. No. They should have obtained a</p> <p>20 search warrant when they got there. I</p> <p>21 mean they could have done it before, but</p> <p>22 with that time of day it was early in the</p> <p>23 morning that instead of going through an</p>

<p style="text-align: right;">Page 193</p> <p>1 attorney that is on call, they could have 2 arrested him and then go and write a 3 search warrant or do a telephonic search 4 warrant over the phone. 5 Q. Number 5, you said they allowed 6 Bunn to contaminate the crime scene. How 7 did they allow that? 8 A. They did this in two instances. 9 First when they first came up to the door 10 for some reason they identify themselves 11 and then they leave, which still isn't 12 clear why. 13 They come back, I don't know, 10, 14 15 minutes later, and then they obtain a 15 consent to search from him. And then 16 while they're doing it he's walking around 17 the house with them as they're videotaping 18 the house. 19 Q. Okay. What did he contaminate 20 though? 21 A. I don't know. 22 Q. Is there any evidence showing that 23 he contaminated any of the crime scene?</p>	<p style="text-align: right;">Page 194</p> <p>1 A. We don't know. Because of the 2 investigation -- look, you allow somebody 3 in their house for 15 minutes, I mean 4 there's a lot of stuff I could do in 5 15 minutes. There's lot of stuff I could 6 destroy, hide, whatever you want to -- you 7 know, so that's the problem. 8 I mean, you don't, you don't know. 9 And the second time they come back and 10 they're walking around with the videotape 11 and he's walking around who knows what, 12 you know, it's possible he's taking things 13 off dresser drawers or whatever. 14 I'm just giving you an example. 15 There's no proof of that, but I'm just 16 saying we don't know. And that's why 17 crime scenes are just -- especially this 18 here would be attacked in court. 19 Some defense attorneys would love 20 this, they would attack a crime scene 21 alone. 22 Q. What could Bunn have hidden or 23 destroyed?</p>
<p style="text-align: right;">Page 195</p> <p>1 A. I don't know. 2 Q. How did they fail to properly 3 interview Ms. Rondini at the police 4 station? 5 MS. BOLGER: Sorry, you're 6 at the bottom of this page to the top -- 7 you forgot -- you skipped over two; right? 8 MR. RITCHEY: Yeah, I think 9 we talked about those two. 10 MS. BOLGER: The one where 11 they let him go fishing with his attorney, 12 and then you say failed to properly -- 13 okay, so can you just scroll up -- there 14 you go, thank you. 15 A. Okay. So, again, they don't, you 16 know, he doesn't ask very many open-ended 17 questions. 18 Most of your questioning should be 19 open-ended. First of all, we'll go back 20 to whether she was offered or not, she did 21 not eat or sleep, or at least was able to 22 rest and have some kind of break between 23 the actual possible assault and the exam</p>	<p style="text-align: right;">Page 196</p> <p>1 and to the point where now she's being 2 interviewed. 3 So, you know, she's tired, she's 4 been through a lot, and this goes for any 5 victim, and so they failed to have that 6 break. 7 The trauma-based interview really 8 you have to understand how trauma works 9 and how your brain works when it receives 10 that. 11 You know, you get very narrow 12 tunnel vision. Your body has to decide 13 between a fight -- flight or freeze, and 14 you still have to breathe and walk and 15 talk, so your brain is very busy at that 16 time so when she states that she can't 17 open the door, she can't unlock the 18 bedroom door, instead of taking that as, 19 you know, one thing, it's actually because 20 she was suffering under that trauma and 21 she was confused and disheveled to where 22 she couldn't open the door. 23 That's why she decides to go out</p>

<p style="text-align: right;">Page 197</p> <p>1 the window. She decides -- well, she puts 2 on his shirt because she can't find hers. 3 She decides to climb back through the 4 window, so all that -- all those things 5 that in that interview, you know, Jones 6 could have clarified why she was doing 7 those things, and, again, it comes to 8 state of mind. 9 And she can't explain why -- you 10 know, she won't be able to explain the 11 small details of why didn't she run, why 12 didn't you fight back, why didn't you do 13 all of these things. 14 And as, you know, an interviewer 15 you have to understand all of the dynamics 16 of the sexual-based crimes and when people 17 are molested or they're attacked sexually 18 how the brain actually records that. 19 Q. How did you come to learn about 20 trauma-based interviews? 21 MS. BOLGER: Object to the 22 form. It's been answered this morning. 23 You can do it again, Carl.</p>	<p style="text-align: right;">Page 198</p> <p>1 A. Yeah, I mean I learned it when I 2 went to sex crimes. Joanne Archambault 3 taught me that. I also learned from 4 Russell Strand later. 5 Q. (By Mr. Ritchey) Do you know if 6 Jones or Hastings ever received 7 trauma-based interview training? 8 A. I have no clue. 9 Q. How long was Ms. Rondini's memory 10 gap as it pertains to these allegations 11 and events? 12 MS. BOLGER: Object to the 13 form. 14 A. I don't understand the question, 15 sir. You mean when did she start having 16 memory lapse; is that what you're saying? 17 Q. (By Mr. Ritchey) I guess you said 18 she blacked out. When was that blackout 19 period? 20 MS. BOLGER: Object to the 21 form. I'm not sure I think that's what he 22 testified to, but you can answer it if you 23 understand it.</p>
<p style="text-align: right;">Page 199</p> <p>1 A. From my reading of the report is, 2 in her interview, is the last thing she 3 remembered was being on the patio and the 4 next thing she remembers was being in the 5 car with Barksdale and Bunn. 6 Q. (By Mr. Ritchey) When she's in the 7 car with Barksdale and Bunn is she 8 traveling to her apartment or Bunn's 9 house? 10 MS. BOLGER: I'm going to 11 object to the form. You mean -- Carl 12 obviously wasn't in the car so you mean -- 13 I guess I don't understand what you're 14 asking there. 15 Q. (By Mr. Ritchey) Just based on the 16 review of the material he's done already. 17 A. I think it's both. I mean I think 18 she was in the car both times. I think 19 what she remembers is obviously she says 20 the next thing she remembers is being in 21 the car with Bunn and Barksdale is that 22 they're on the way to Mr. Bunn's 23 residence.</p>	<p style="text-align: right;">Page 200</p> <p>1 Q. Is this the only blackout period 2 Ms. Rondini had in your opinion? 3 A. I don't know. 4 Q. From what you reviewed is there 5 any other blackout period? 6 A. I don't know. I mean, I didn't 7 see any, but I don't know if there 8 actually was one or not, I don't know. 9 Q. All right. I'm now on page 13 of 10 your report, and this is part of the 11 timeline that you included. 12 And I'm looking, it's under the 13 July 2nd, 2015, bold and underlined 14 heading, and it's the time entry after the 15 12:23 a.m. and it says time unknown 16 Rondini and Bunn have sexual intercourse. 17 Do you see where I'm at? 18 A. Yes. 19 Q. You wrote Bunn told investigators 20 that this intercourse was consensual. 21 Rondini told investigators it was not. 22 When did she tell investigators it 23 was not consensual?</p>

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<p>1 A. She told them a couple of times.</p> <p>2 The first time it's at the hospital when</p> <p>3 she stated that she had been held down.</p> <p>4 She told them that she didn't want to have</p> <p>5 sex.</p> <p>6 The second time was in the</p> <p>7 interview with Jones at the police</p> <p>8 station.</p> <p>9 Q. Did Ms. Rondini ever use the term</p> <p>10 consensual or non-consensual?</p> <p>11 A. I don't remember. I don't recall</p> <p>12 that.</p> <p>13 Q. Is it your opinion that</p> <p>14 Ms. Rondini was blacked out during the</p> <p>15 sexual intercourse?</p> <p>16 MS. BOLGER: Object to the</p> <p>17 form of the question. He's certainly not</p> <p>18 here to testify to that.</p> <p>19 Carl, if you can answer, go</p> <p>20 ahead.</p> <p>21 A. I don't think she said she was</p> <p>22 blacked out during the intercourse.</p> <p>23 Q. (By Mr. Ritchey) I'm looking on</p>	<p>1 page 14 of your report, and it's going to</p> <p>2 be about the first entry time unknown.</p> <p>3 Looks like you're recounting when</p> <p>4 Ms. Rondini is climbing out of the bedroom</p> <p>5 window and climbing back in.</p> <p>6 Do you see where I'm at?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Have you ever been involved in a</p> <p>9 sexual assault or rape investigation where</p> <p>10 the alleged victim re-enters a room with</p> <p>11 the alleged suspect after fleeing that</p> <p>12 room?</p> <p>13 MS. BOLGER: I'm sorry. Can</p> <p>14 you do that again? I'm sorry to ask you</p> <p>15 to do that again because I know that must</p> <p>16 be horrible but can you do that again?</p> <p>17 (Whereupon, requested portion was</p> <p>18 read back by court reporter.)</p> <p>19 MS. BOLGER: Thanks.</p> <p>20 Sorry. I object to the</p> <p>21 form, but, Carl, you can answer.</p> <p>22 A. Yes, I did, but under different</p> <p>23 circumstances than this.</p>
Page 203	Page 204
<p>1 Q. (By Mr. Ritchey) What was</p> <p>2 different?</p> <p>3 A. There was another male out in the</p> <p>4 living room, and my victim felt -- she</p> <p>5 feared this other person, so she came back</p> <p>6 into the room and actually pretended to be</p> <p>7 asleep.</p> <p>8 Q. So in that case she felt</p> <p>9 threatened when she escaped and went back</p> <p>10 into the room with the alleged suspect?</p> <p>11 A. Yes, these were all Hell's Angels.</p> <p>12 Q. Okay. I'm now looking at page 16</p> <p>13 of your report, looking at the March 2016</p> <p>14 entry where you say sexual assault case</p> <p>15 against Bunn if presented to a grand jury</p> <p>16 which decides not to charge him with</p> <p>17 criminal offense.</p> <p>18 A. Right.</p> <p>19 Q. Do you see where I am?</p> <p>20 A. Yes.</p> <p>21 Q. Do you know when the case or</p> <p>22 investigation was submitted to the</p> <p>23 district attorney's office?</p>	<p>1 A. Do I know when it was?</p> <p>2 Q. Right.</p> <p>3 A. I don't know the date of it, no,</p> <p>4 sir.</p> <p>5 Q. Do you know how long before the</p> <p>6 grand jury presentation the investigation</p> <p>7 was submitted to the district attorney?</p> <p>8 MS. BOLGER: Which grand</p> <p>9 jury presentation? The one against Megan</p> <p>10 or the one against T. J. Bunn?</p> <p>11 MR. RITCHEY: The one</p> <p>12 against T. J. Bunn.</p> <p>13 A. You're asking me what the length</p> <p>14 of time between the investigation was over</p> <p>15 and then they submitted it? Is that what</p> <p>16 you're asking me, sir?</p> <p>17 Q. Right. What I'm asking you is do</p> <p>18 you know about how long before the sexual</p> <p>19 assault case against T. J. Bunn was</p> <p>20 presented to a jury was in relation to</p> <p>21 when that case was handed over to the</p> <p>22 district attorney's office?</p> <p>23 A. No, I don't know that timeframe.</p>

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<p>1 I don't -- I mean, I don't understand why</p> <p>2 it was sent over and I don't understand</p> <p>3 why or the timeframe.</p> <p>4 Q. What do you mean you don't</p> <p>5 understand why it was sent over?</p> <p>6 A. Well, you send investigations over</p> <p>7 to request charges in order to, you know,</p> <p>8 hold somebody accountable to have them</p> <p>9 charged with a crime.</p> <p>10 And the only way to do that is to</p> <p>11 have a victim, you know, you get to face</p> <p>12 your accuser, and she's dead. She'll</p> <p>13 never walk into a court. She could never</p> <p>14 testify.</p> <p>15 Which at first I thought I got my</p> <p>16 dates mixed up, and the more I looked at</p> <p>17 it, it was like this says to me, and there</p> <p>18 might be some reason, I don't know, but to</p> <p>19 me it didn't make any sense that, you</p> <p>20 know -- I mean what happens if they did</p> <p>21 charge her? What then?</p> <p>22 Is the prosecutor going to call</p> <p>23 her in to testify, you know? So that part</p>	<p>1 always kind of bothered me, so I don't</p> <p>2 know why it was sent.</p> <p>3 Q. Are you saying you don't know what</p> <p>4 the district attorney presented that case</p> <p>5 to the grand jury, or are you saying you</p> <p>6 don't know why the Homicide Unit sent the</p> <p>7 case to the district attorney's office?</p> <p>8 MS. BOLGER: I'm going to</p> <p>9 again ask for clarification. You mean the</p> <p>10 one against Megan or the one against Bunn?</p> <p>11 Q. (By Mr. Ritchey) We're just</p> <p>12 talking about the one against Bunn right</p> <p>13 now.</p> <p>14 A. Well, I don't know who presents it</p> <p>15 to a grand jury, sir.</p> <p>16 But at some point only the cops</p> <p>17 have it -- have the case, and at some</p> <p>18 point they send it over to a district</p> <p>19 attorney who presents it.</p> <p>20 So I don't know the dates or when</p> <p>21 that occurred. Do you see what I'm</p> <p>22 saying? I mean, I don't -- yeah, I don't</p> <p>23 know when the cops sent it over and I</p>
Page 207	Page 208
<p>1 don't know when it was presented, but just</p> <p>2 what I have it just kind of looked funny</p> <p>3 is what I'm saying.</p> <p>4 Q. All right. I'm looking on page 17</p> <p>5 now of your report. This is in the</p> <p>6 analysis section under number one of the</p> <p>7 subheading of investigation was not</p> <p>8 sufficiently in-depth to reach an accurate</p> <p>9 conclusion.</p> <p>10 I'm looking at the second sentence</p> <p>11 underneath that heading. It says this is</p> <p>12 simply insufficient to conduct a rape</p> <p>13 investigation, particularly whereas here</p> <p>14 the complaining witness reported major</p> <p>15 failures of memory.</p> <p>16 When you're saying major failures</p> <p>17 of memory, are you talking about, you</p> <p>18 know, where she couldn't remember leaving</p> <p>19 the bar to when she remembered being in</p> <p>20 Bunn's car or what are you talking about</p> <p>21 there?</p> <p>22 A. Well, what I'm talking about there</p> <p>23 is you had this gap of -- a major gap that</p>	<p>1 was never really fully looked at. I mean</p> <p>2 she invites two men to her apartment. I</p> <p>3 mean, correct?</p> <p>4 I mean so we don't know what</p> <p>5 happened in that apartment. We don't know</p> <p>6 what happened when she first gets into the</p> <p>7 car, so, yeah, there's this big chunk of</p> <p>8 time that needs to be accounted for.</p> <p>9 Q. And interviewing the two witnesses</p> <p>10 during that time is not sufficient?</p> <p>11 A. Yes, their perspective on it, yes.</p> <p>12 Q. And then getting GPS data during</p> <p>13 that failure memory is not sufficient?</p> <p>14 A. Yeah, that's part of it.</p> <p>15 Q. What other evidence could they</p> <p>16 have uncovered for those memory gaps?</p> <p>17 MS. BOLGER: Object to the</p> <p>18 form. He's testified extensively about</p> <p>19 this.</p> <p>20 This is the same question</p> <p>21 we've done before, but go ahead and talk</p> <p>22 about it again, Carl.</p> <p>23 A. Well, I mean, we needed to know</p>

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<p>1 what made her black out. She said she 2 didn't have enough alcohol to become drunk 3 so something caused her to black out. 4 Now, we don't have -- we didn't 5 test the urine; right? There was no blood 6 taken, so we don't know if she was under 7 the influence of a date rape drug or a 8 muscle relaxer or depression medicine or 9 anything of that stuff. 10 Look, you have a person that's 11 being accused, and then his buddy you just 12 didn't let them fill in the blanks, right, 13 that's not fair to your investigation and 14 it's certainly not fair to the victim who 15 doesn't know what happened. 16 And, again, that's why these type 17 of investigations it's just not one small 18 thing, it's the whole picture. You 19 wouldn't be able to tell a story as an 20 investigator. 21 I'm not telling my story through 22 Ms. Rondini's eyes and I'm not telling my 23 story through Mr. Bunn's eyes. Okay, it's</p>	<p>1 not just those two what they're telling 2 me. 3 So the investigation in a whole, 4 the whole investigation is not sufficient 5 for you to tell me what happened or for 6 anybody -- for that investigation to tell 7 me what happened. 8 It's just not a fair, accurate 9 depiction of what occurred. 10 Q. During this blackout period that 11 you say that happened, what other evidence 12 would there be? None of the people at the 13 bar were present during this blackout 14 period, were they? 15 MS. BOLGER: Object to the 16 form of the question. You can answer the 17 question, Carl, in addition to the pages 18 you have of this, but go ahead. 19 A. That's what I'm saying, you need 20 to talk to the bartender. You need to 21 talk to the door guy. 22 You need to talk to other people 23 as to, you know, hey, she was here with a</p>
Page 211	Page 212
<p>1 group of people and then they all left and 2 she was here by herself. What did she do 3 after that? We don't know. 4 So again, that's why it goes back 5 to doing a complete investigation and talk 6 to as many people as possible that could 7 give you -- that could fill in those 8 blanks because we don't -- the last thing 9 she remembers is being on the patio. 10 Was it three minutes later she 11 left? Was it 30 minutes later? I mean 12 who knows; we don't know. 13 Q. (By Mr. Ritchey) Well, we have the 14 Innisfree -- sorry, go ahead. 15 A. As I said, we don't have anybody 16 to tell us that because they weren't -- 17 they weren't questioned. 18 Q. We have the Innisfree surveillance 19 videos, don't we? 20 A. Yes. 21 Q. And wouldn't that tell us if she 22 was on the patio when she left? 23 A. Yes, it doesn't tell you when she</p>	<p>1 first blacked out though, sir. 2 Q. Still on this same page, and I'm 3 kind of midway through that same paragraph 4 we were discussing. 5 And it says to properly understand 6 the full context of what had happened that 7 evening Jones and Hastings should have 8 sought to determine why Rondini had 9 blacked out and whether she had been 10 drugged. 11 Are you contending that she could 12 have been drugged? 13 MS. BOLGER: Object to the 14 form of the question. 15 A. Yeah, it's possible. That's what 16 that blood test and the urine test are so 17 important. 18 Q. (By Mr. Ritchey) Would the review 19 of the Innisfree videos not show us 20 whether or not she's been drugged? 21 MS. BOLGER: Object to the 22 form. 23 A. No, I don't think so.</p>

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<p>1 Q. (By Mr. Ritchey) Why not?</p> <p>2 A. If somebody is going to slip</p> <p>3 something in your drink, I mean, they're</p> <p>4 not holding it out this high and going to</p> <p>5 slip it in.</p> <p>6 You know, they're not -- you know,</p> <p>7 could that have captured somebody slipping</p> <p>8 in somebody's drink, I guess it could</p> <p>9 have, but more than likely I mean these</p> <p>10 guys -- if this is what happened, they</p> <p>11 could have put it in a drink, and again,</p> <p>12 there's nothing that I've read or was</p> <p>13 given to me that even suggest that.</p> <p>14 Q. But you never even looked at the</p> <p>15 Innisfree videos, did you?</p> <p>16 A. I'm sorry?</p> <p>17 Q. You never even looked at the</p> <p>18 Innisfree videos, did you?</p> <p>19 A. I looked at the still photos.</p> <p>20 Q. But you never saw the videos?</p> <p>21 A. I don't think so, no, I can't</p> <p>22 recall.</p> <p>23 Q. On page 19 at the top of the page</p>	<p>1 you said in particular Rondini was</p> <p>2 participating in several digital messages</p> <p>3 exchanged during the time where she</p> <p>4 experienced memory lapses.</p> <p>5 MS. BOLGER: Carl, do not</p> <p>6 start there. There's a whole first part</p> <p>7 of that, so read that first sentence on</p> <p>8 page 18 before you answer the next</p> <p>9 question.</p> <p>10 Q. (By Mr. Ritchey) Sure. I can</p> <p>11 scroll up. Just let me know when you're</p> <p>12 ready.</p> <p>13 A. Okay.</p> <p>14 Q. Do you know what messages you're</p> <p>15 specifically referring to? I know you've</p> <p>16 listed you've reviewed text message from</p> <p>17 her friends.</p> <p>18 Are there specific text messages</p> <p>19 within those that you're referencing here?</p> <p>20 A. Just the facts that she doesn't</p> <p>21 remember texting while she's in the car.</p> <p>22 Specifically which ones, I don't know, but</p> <p>23 she doesn't remember texting in the car</p>
Page 215	Page 216
<p>1 because she's -- she was asked that and</p> <p>2 she said that she had not texted anybody</p> <p>3 but we know later once her phone is dumped</p> <p>4 then we do know that she had texted in the</p> <p>5 car.</p> <p>6 Q. All right. On that same sentence</p> <p>7 you continue and the other parties to</p> <p>8 these conversations could have provided</p> <p>9 valuable information to investigators.</p> <p>10 How could they do this if they</p> <p>11 weren't present during that time?</p> <p>12 A. I'm sorry, sir. Where are you at?</p> <p>13 MS. BOLGER: I'm going to</p> <p>14 object to the form of the question. I</p> <p>15 don't understand what you mean by present</p> <p>16 during that time.</p> <p>17 We don't have any reason to</p> <p>18 believe they were present when they were</p> <p>19 getting the text messages, so I just don't</p> <p>20 understand what you mean by present during</p> <p>21 that time.</p> <p>22 You can answer the question,</p> <p>23 Carl, if you do understand.</p>	<p>1 A. I'm sorry, okay.</p> <p>2 Yes, so, you know, Jones could</p> <p>3 have asked them or Hastings could have</p> <p>4 asked them did she text you at one o'clock</p> <p>5 in the morning, does she text at three in</p> <p>6 the morning, is that a common thing.</p> <p>7 When she does text you and she's</p> <p>8 saying certain things is that how she is</p> <p>9 normally when she's, you know, sober or,</p> <p>10 you know, in her normal course of being</p> <p>11 Ms. Rondini is that the way she relates</p> <p>12 herself.</p> <p>13 They could have got that aspect of</p> <p>14 the type of person she is, maybe some of</p> <p>15 her texting habits.</p> <p>16 Q. Are you opining that Ms. Rondini</p> <p>17 was incapacitated during the sexual</p> <p>18 encounter?</p> <p>19 MS. BOLGER: Object to the</p> <p>20 form of the question. No, he's not. We</p> <p>21 have told you what he's opining about.</p> <p>22 This is not a question that</p> <p>23 he needs to answer, but I guess you can,</p>

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<p>1 Carl.</p> <p>2 A. What was the question again?</p> <p>3 MR. RITCHEY: Do you mind</p> <p>4 repeating that?</p> <p>5 THE WITNESS: Sorry, Nancy.</p> <p>6 (Whereupon, requested portion was</p> <p>7 read back by court reporter.)</p> <p>8 A. No, I'm not.</p> <p>9 Q. (By Mr. Ritchey) All right. I'm</p> <p>10 showing you what's been produced as</p> <p>11 BuzzFeed 4167.</p> <p>12 I don't know if this has been</p> <p>13 marked yet. We'll go ahead and mark it as</p> <p>14 Exhibit 119. We'll mark it as Exhibit</p> <p>15 119.</p> <p>16 MS. BOLGER: Do you want to</p> <p>17 give the witness a little context about</p> <p>18 what you're showing him?</p> <p>19 Q. (By Mr. Ritchey) Sure. This is</p> <p>20 just a text message conversation between</p> <p>21 Ms. Rondini and one of her friends and the</p> <p>22 part I'm asking about is this exchange on</p> <p>23 7/2/15 at 12:08 a.m., kind of in the</p>	<p>1 middle towards the bottom.</p> <p>2 A. I see it.</p> <p>3 Q. Did you review this text message</p> <p>4 as a part of your review?</p> <p>5 (Whereupon, a document was marked</p> <p>6 as Plaintiff's Exhibit No. 119 and</p> <p>7 is attached to the original</p> <p>8 transcript.)</p> <p>9 A. Yes, I did.</p> <p>10 Q. Does this text message have any</p> <p>11 bearing on your expert report?</p> <p>12 A. No, I did not.</p> <p>13 MS. BOLGER: Object to the</p> <p>14 form.</p> <p>15 Q. (By Mr. Ritchey) Why not?</p> <p>16 MS. BOLGER: Wait, stop for</p> <p>17 one second. I don't understand what you</p> <p>18 mean by bearing. Can you reask that</p> <p>19 question because I don't understand what</p> <p>20 you mean by bearing.</p> <p>21 Q. (By Mr. Ritchey) Did you consider</p> <p>22 this text message in forming your opinions</p> <p>23 in your report?</p>
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<p>1 A. No, I did not.</p> <p>2 Q. Why not?</p> <p>3 A. It really has nothing to do with</p> <p>4 what occurred later in the evening or in</p> <p>5 the night when it comes to consent.</p> <p>6 Q. And how does the interview of the</p> <p>7 people at the bar how is that relevant to</p> <p>8 the consent issues you just spoke about?</p> <p>9 MS. BOLGER: Object to the</p> <p>10 form. He's never said it was.</p> <p>11 Go ahead, Carl.</p> <p>12 A. What they can tell you is how</p> <p>13 Ms. Rondini ends up in the backseat of</p> <p>14 Mr. Bunn's car, that she was intoxicated</p> <p>15 or blacked out or acting intoxicated.</p> <p>16 So there's two things here that</p> <p>17 we're talking about. On the front end of</p> <p>18 it at the bar and those people and those</p> <p>19 witnesses and her friends are going to</p> <p>20 show you or tell you how she ends up by</p> <p>21 herself.</p> <p>22 She ends up walking alone down the</p> <p>23 street and how she ends up in the back of</p>	<p>1 a car, okay. Also, how she does not</p> <p>2 remember going back to her house.</p> <p>3 In the backseat of the car is when</p> <p>4 she in my opinion is coming out of that</p> <p>5 blackout and by that time she's already in</p> <p>6 route to Mr. Bunn's residence.</p> <p>7 So, again, looking at the big</p> <p>8 picture of everything and not just one</p> <p>9 moment in time that -- all that stuff on</p> <p>10 the front end is how she gets into this</p> <p>11 vehicle and ends up at his residence and</p> <p>12 then, boom, we can start over from the</p> <p>13 residence to the time that she's in the</p> <p>14 bedroom.</p> <p>15 Does that make sense to you, sir?</p> <p>16 Q. (By Mr. Ritchey) I think so.</p> <p>17 A. Okay.</p> <p>18 MS. BOLGER: Scotch, if you</p> <p>19 want to follow up, I'm totally fine for</p> <p>20 you to follow up. I have to check</p> <p>21 something in my five minutes. I don't</p> <p>22 want to cut you off on a follow-up, but if</p> <p>23 you wouldn't mind giving me five minutes</p>

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<p>1 after that follow-up, I would like to take 2 a break. 3 Q. (By Mr. Ritchey) Yeah, just give 4 me one minute, I think we're good. 5 Does this text message not show 6 Ms. Rondini's state of mind during this 7 time? 8 A. I don't know, sir. I don't know 9 what -- I mean, I don't know if it 10 actually states her state of mind or not. 11 I couldn't tell from just this text. 12 MR. RITCHEY: Why don't we 13 take a break for you, Kate? 14 MS. BOLGER: Yeah, I'm 15 really sorry. No child care, so thank you 16 very much. 17 VIDEOGRAPHER: Off the 18 record at 3:09 p.m. 19 (Recess was taken.) 20 VIDEOGRAPHER: Back on the 21 record at 3:14 p.m. 22 Q. (By Mr. Ritchey) All right. I'm 23 going to show you your report again, and</p>	<p>1 this is still page 19. 2 And this is the second bullet 3 point where you said they did not collect 4 the clothing that Bunn was wearing 5 immediately before they missed any chance 6 to perform a forensic analysis of his 7 clothing. 8 You may have answered this one 9 already but I don't remember. What would 10 a forensic analysis of the clothing show? 11 MS. BOLGER: Object to the 12 form. 13 A. That he -- that he actually 14 ejaculated. When he puts his clothes back 15 on there's some transfer of her vaginal 16 secretions on his clothing. 17 Q. (By Mr. Ritchey) Would this have 18 shown whether a rape had occurred or not? 19 A. No. 20 Q. And the next bullet point you're 21 talking about Ms. Rondini's injuries. 22 Are you saying these injuries 23 occurred directly from Mr. Bunn or through</p>
Page 223	Page 224
<p>1 another act during the course of these 2 events? 3 MS. BOLGER: Object to the 4 form. 5 A. No, these injuries were actually 6 from when she went down and she received 7 -- when she climbed out the window. 8 Q. (By Mr. Ritchey) All right. And 9 then the next bullet point said 10 Investigator Jones also failed to take 11 custody of the sample. 12 I believe you're referring to 13 urine sample. Thus compromising the chain 14 of evidence. Where did you get this 15 information from? 16 A. I don't recall. I remember 17 reading it. Let me think. I remember 18 reading it, sir. I just don't remember 19 where I read it from. 20 Q. Would that have been in the 21 materials you listed in this report that 22 you reviewed? 23 A. Yes.</p>	<p>1 Q. The next bullet point and that 2 continues on to page 20, there's no 3 evidence that Jones or Hastings checked 4 social media of any of the persons 5 involved in the case. 6 A. Correct. 7 Q. Do you see where I am? 8 A. Yes, sir. 9 Q. Have you checked the social media 10 of any of the persons involved in the 11 case? 12 MS. BOLGER: Object to the 13 form. 14 A. You broke like halfway through so 15 I didn't hear it -- 16 Q. (By Mr. Ritchey) Did you review -- 17 did you review any of the social media of 18 any of the persons involved in the case? 19 A. No, I did not. 20 Q. How would the social media 21 accounts affected the case? 22 A. I don't know how it would have. I 23 mean, I've had cases where it has. I've</p>

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<p>1 gained information from suspects and</p> <p>2 witnesses of them posting certain things</p> <p>3 on social media.</p> <p>4 But in this case I don't know</p> <p>5 because it was never collected or looked</p> <p>6 at and never documented.</p> <p>7 Q. Later on page 20, looking about</p> <p>8 midway on the page under hospital</p> <p>9 interview, couple of sentences from there</p> <p>10 it says investigators often use interview</p> <p>11 scale -- the interview as a scale or gauge</p> <p>12 to determine credibility of a person with</p> <p>13 whom they're speaking.</p> <p>14 If the investigator is not trained</p> <p>15 to notice and take account of credibility</p> <p>16 indicators while interviewing a sexual</p> <p>17 assault victim, they will misjudge the</p> <p>18 victim. Do you see that?</p> <p>19 A. Correct, yes, I do.</p> <p>20 Q. What indicators are you talking</p> <p>21 about?</p> <p>22 A. There's indicators where somebody</p> <p>23 is not or says something that's untrue and</p>	<p>1 you know it to be true.</p> <p>2 They may not volunteer certain</p> <p>3 information and then you find out that</p> <p>4 they had done that. Traditionally, and I</p> <p>5 said this earlier this morning but</p> <p>6 traditionally there's indicators this</p> <p>7 person would have a credibility issue.</p> <p>8 In these type of cases where</p> <p>9 somebody has suffered trauma and because</p> <p>10 of the type of crime that it is that those</p> <p>11 traditional indicators should not be a</p> <p>12 gauge of their credibility.</p> <p>13 Q. Do you know if Jones or Hastings</p> <p>14 were trained in these indicators?</p> <p>15 A. I do not know that.</p> <p>16 Q. I'm going to scroll down to the</p> <p>17 footnote on this page. You said though</p> <p>18 Rondini has spoken to Ciara Younger and</p> <p>19 Rebecca Lundgren immediately after the</p> <p>20 alleged assault she did not speak in</p> <p>21 detail with them. Do you see where I am?</p> <p>22 A. Yes, sir.</p> <p>23 Q. How do you know they did not speak</p>
Page 227	Page 228
<p>1 in detail?</p> <p>2 A. Well, Ms. Younger said that in her</p> <p>3 interview with Jones at the police</p> <p>4 station.</p> <p>5 Q. Scrolling down to page 21, I'm</p> <p>6 looking at the second full paragraph</p> <p>7 towards the end of that paragraph it says</p> <p>8 but if one is being held down against</p> <p>9 their will, then the element of resisting</p> <p>10 is already present.</p> <p>11 MS. BOLGER: I lost you.</p> <p>12 A. I don't know where that is.</p> <p>13 Q. (By Mr. Ritchey) I'll try to</p> <p>14 highlight it. Kind of right there where</p> <p>15 that blue highlight is.</p> <p>16 A. Okay.</p> <p>17 MS. BOLGER: Feel free to</p> <p>18 read the whole paragraph.</p> <p>19 Q. (By Mr. Ritchey) Yeah, if you need</p> <p>20 time, let me know.</p> <p>21 A. Okay, I read it.</p> <p>22 Q. In that sentence are you saying</p> <p>23 the element of earnest resisting is</p>	<p>1 already present?</p> <p>2 A. That's already present; is that</p> <p>3 what you're asking me?</p> <p>4 Q. Yeah, I'm trying to determine if</p> <p>5 you are just saying resisting is present</p> <p>6 or the element of earnest resisting is</p> <p>7 present.</p> <p>8 A. I think that the element of</p> <p>9 earnest resistant is present. If somebody</p> <p>10 is holding you down, that means you're</p> <p>11 trying to get up.</p> <p>12 If you're trying to get up,</p> <p>13 they're pushing back, so for her to say he</p> <p>14 was holding me down, therefore that means</p> <p>15 she was trying to get up and if she's</p> <p>16 trying to get up, then that's her push</p> <p>17 back, that's her resistance.</p> <p>18 Q. Did you just assume she was trying</p> <p>19 to get up?</p> <p>20 A. Well --</p> <p>21 MS. BOLGER: Object to the</p> <p>22 form.</p> <p>23 A. -- she was already down, yes.</p>

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<p>1 Q. (By Mr. Ritchey) Did she ever 2 say -- 3 A. Well we don't know, sir. Right, I 4 mean, that's what's so frustrating about 5 this case is that she could have been 6 asked those things but she never was and 7 that's what again, you know, these two 8 detectives should have got a little more 9 into that at the hospital and definitely 10 Jones should have really dug down deep on 11 that at the police station. 12 Q. Just for my clarification, she 13 never mentioned she was trying to get up 14 when she was talking to investigators? 15 MS. BOLGER: Object to the 16 form. You can look at the document 17 yourself. 18 A. I don't believe she verbally said 19 that, no, sir. 20 Q. (By Mr. Ritchey) Towards the end 21 of that paragraph or at the end of that 22 paragraph actually, you put but Jones and 23 Hastings did not follow up on Rondini's</p>	<p>1 statements. 2 MS. BOLGER: I'm lost -- 3 there it is, okay. 4 Are you there, Carl? 5 A. Yeah, I'm reading it. 6 Q. (By Mr. Ritchey) Let me know when 7 you're ready. 8 A. Okay. 9 Q. Was Jones questioning whether she 10 resisted in any manner not a follow-up to 11 these statements you referenced? 12 A. Yes, he did not ask her the 13 questions, the follow-up questions of what 14 makes you think you were being held down. 15 Well, I was trying to get up or not to get 16 into any of those. 17 There should have been a lot more 18 follow-up questions to that and also 19 her -- 20 Q. (By Mr. Ritchey) Did -- 21 MS. BOLGER: He's answering, 22 Scotch -- 23 Q. (By Mr. Ritchey) I'm sorry, that's</p>
Page 231	Page 232
<p>1 my fault. 2 A. Just a little delay, I'm sorry. 3 Also the resistance of her 4 verbally telling him that, you know, she 5 didn't want or she needed to meet with her 6 friends and her body language, I mean she 7 definitely just wasn't into doing this. 8 And so, you know, those more 9 follow-up questions I feel that if Jones 10 would have questioned her properly along 11 those lines, that he would have figured 12 out that she was resisting but it was 13 verbal and this is before she even got 14 onto the bed. 15 Q. (By Mr. Ritchey) So asking 16 Ms. Rondini how she resisted Bunn's 17 advances was not a follow-up question in 18 your opinion? 19 A. I think that is a follow-up 20 question, yes, but I don't think it's 21 enough. 22 Q. And you say they didn't follow up 23 on Rondini's statements. You didn't say</p>	<p>1 they don't follow up enough. 2 MS. BOLGER: I'm sorry, is 3 that a question -- stop, I didn't 4 understand the question. Could you do 5 that again, Scotch? 6 MR. RITCHEY: Would you mind 7 repeating that? 8 (Whereupon, requested portion was 9 read back by court reporter.) 10 MS. BOLGER: Okay. 11 A. Well, I think -- I mean I think 12 you're mincing words with me. To me it's 13 the same thing. 14 There's some statements you follow 15 up on and then other ones you don't, even 16 though what you're following -- the 17 statements that are made are kind of 18 intertwined here. 19 If she says she did one thing on 20 the bed, you know, and something else, you 21 know, sitting on a chair and you asked a 22 partial follow-up -- you ask a follow-up 23 question and it's partial, okay, then it</p>

<p style="text-align: right;">Page 233</p> <p>1 wasn't enough. I mean was it -- or was it</p> <p>2 none at all. I think it's both.</p> <p>3 Q. (By Mr. Ritchey) The next</p> <p>4 paragraph, second sentence you say she</p> <p>5 repeatedly told Jones and Hastings that</p> <p>6 she did not want to have sex, and it goes</p> <p>7 on from there, but I want to kind of focus</p> <p>8 on that first part. Are you saying --</p> <p>9 MS. BOLGER: Carl, you need</p> <p>10 to read the rest of it though.</p> <p>11 Q. (By Mr. Ritchey) Well, let me know</p> <p>12 when you're ready.</p> <p>13 A. Okay. Okay.</p> <p>14 Q. Did Ms. Rondini ever say she did</p> <p>15 not want to have sex to Bunn?</p> <p>16 A. Not that I'm aware of, no.</p> <p>17 Q. Did Ms. Rondini ever say she could</p> <p>18 not fight back?</p> <p>19 MS. BOLGER: Object to the</p> <p>20 form of the question.</p> <p>21 A. Did she actually say that she</p> <p>22 wasn't able to, is that what you're asking</p> <p>23 me, sir?</p>	<p style="text-align: right;">Page 234</p> <p>1 Q. (By Mr. Ritchey) Right.</p> <p>2 A. I don't think she said that, no.</p> <p>3 That she couldn't physically fight back,</p> <p>4 no.</p> <p>5 Q. Scrolling down to page 22. This</p> <p>6 is the first full paragraph on this page.</p> <p>7 It starts out instead Jones and Hastings</p> <p>8 focused on Rondini's statement, and if you</p> <p>9 want to continue reading, you can. I can</p> <p>10 direct you --</p> <p>11 MS. BOLGER: You can also</p> <p>12 read before that.</p> <p>13 Q. (By Mr. Ritchey) -- and read</p> <p>14 before that. You tell me where you want</p> <p>15 to go on it and I'll be happy to take you.</p> <p>16 A. What question are you going to ask</p> <p>17 me so I know what to read here?</p> <p>18 Q. I'll ask you and then if you need</p> <p>19 to read something, just let me know.</p> <p>20 A. Okay.</p> <p>21 Q. In this paragraph you said Jones</p> <p>22 and Hastings erred in making this</p> <p>23 conclusion.</p>
<p style="text-align: right;">Page 235</p> <p>1 Are you referring to the sentence</p> <p>2 above where no assault occurred; is that</p> <p>3 correct?</p> <p>4 MS. BOLGER: If you're going</p> <p>5 to ask that question, I'm going to insist,</p> <p>6 Carl, that you read the prior at least two</p> <p>7 paragraphs or three paragraphs.</p> <p>8 A. Okay. Where are you at,</p> <p>9 Mr. Ritchey, in the paragraph?</p> <p>10 Q. (By Mr. Ritchey) I am right here.</p> <p>11 A. Okay. So in that first sentence</p> <p>12 you say instead Jones and Hastings focused</p> <p>13 on Rondini's statements that she felt like</p> <p>14 letting Bunn have sex with her was the</p> <p>15 only way that he would let her go as</p> <p>16 conclusive evidence that she did not</p> <p>17 earnestly resist Bunn's advances and</p> <p>18 consequently no assault occurred.</p> <p>19 Next sentence you say Jones and</p> <p>20 Hastings erred in making this conclusion</p> <p>21 so early on in the investigation with less</p> <p>22 than nine minutes of questioning and</p> <p>23 particularly in light of the evidence</p>	<p style="text-align: right;">Page 236</p> <p>1 Rondini had provided to Jones and Hastings</p> <p>2 that she had been held down and did not</p> <p>3 give consent.</p> <p>4 Are you saying that Jones and</p> <p>5 Hastings concluded that no assault had</p> <p>6 occurred after these nine minutes of</p> <p>7 questioning?</p> <p>8 MS. BOLGER: Carl, I'm</p> <p>9 asking you to read the rest -- read at</p> <p>10 least a couple of paragraphs above and</p> <p>11 below before you answer that.</p> <p>12 A. Yeah, I did. I got it.</p> <p>13 Yeah, they determined when she</p> <p>14 said I had been held down, he immediately</p> <p>15 goes into, you know, did you fight back.</p> <p>16 And she says no. And then, you</p> <p>17 know, did you tell him no. Did you use</p> <p>18 the word no. No, she did not.</p> <p>19 And without doing any</p> <p>20 investigation whatsoever he starts to have</p> <p>21 this bias that she did not earnest resist.</p> <p>22 I mean if you listen to that</p> <p>23 interview you can hear it. He completely</p>

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<p>1 switches from trying to gather information</p> <p>2 to trying to determine whether she was</p> <p>3 sexually assaulted or not without even</p> <p>4 leaving that hospital.</p> <p>5 Q. (By Mr. Ritchey) So you were able</p> <p>6 to determine what Investigator Jones and</p> <p>7 Hastings were thinking based on that audio</p> <p>8 interview?</p> <p>9 A. By the questions they were asking,</p> <p>10 yes, sir.</p> <p>11 Q. All right. Later in that</p> <p>12 paragraph you said this error had an</p> <p>13 impact on Rondini who started crying</p> <p>14 apparently because she was beginning to</p> <p>15 deduce that Jones and Hastings did not</p> <p>16 believe her.</p> <p>17 How do you know --</p> <p>18 A. Correct.</p> <p>19 Q. -- how do you know what she was</p> <p>20 deducing at that point?</p> <p>21 MS. BOLGER: Object to the</p> <p>22 form. It does say apparently. You can</p> <p>23 answer.</p>	<p>1 A. Well, I mean she's not crying when</p> <p>2 they first come in. She's conversing with</p> <p>3 them. She sounds -- you know, when</p> <p>4 they're asking questions she's able to</p> <p>5 answer them.</p> <p>6 When she does get to the sexual</p> <p>7 assault portion of it and she states that</p> <p>8 he held her down and then when the moment</p> <p>9 there's pushback, meaning he starts asking</p> <p>10 her about earnest resistance then that's</p> <p>11 when she starts crying, not before that.</p> <p>12 And this was, you know, seven or</p> <p>13 eight minutes into this interview towards</p> <p>14 the end and that's when she starts to cry.</p> <p>15 Q. (By Mr. Ritchey) And that's what</p> <p>16 you base this sentence off of?</p> <p>17 A. Yeah, I mean it's apparent to me</p> <p>18 that, you know, apparently that's what</p> <p>19 happened. I'm not saying that, you know,</p> <p>20 that everybody has to cry.</p> <p>21 It's just that she cries at that</p> <p>22 very moment that portion of the</p> <p>23 questioning, and it just so happens that</p>
Page 239	Page 240
<p>1 well, you know, hey, if you didn't push</p> <p>2 back then this isn't a rape.</p> <p>3 Q. Didn't she start -- I'm sorry --</p> <p>4 A. I was just going to say it's very</p> <p>5 well that she took it that way. You know,</p> <p>6 it's likely that she could have took it</p> <p>7 that way.</p> <p>8 Q. Didn't she start crying when she</p> <p>9 was beginning to explain the door handle</p> <p>10 situation?</p> <p>11 A. Yes, I mean that was frustration</p> <p>12 that she couldn't get out this door, but</p> <p>13 also that a person would be fearful.</p> <p>14 I don't know exactly what she is</p> <p>15 thinking because I wasn't -- you know, I'm</p> <p>16 not the investigator that should have been</p> <p>17 asking her those questions, and those are</p> <p>18 the questions that should have been asked</p> <p>19 of her.</p> <p>20 I know your question to me was was</p> <p>21 that the same thing as far as the crime,</p> <p>22 but again, when I as an investigator and</p> <p>23 interrogator and interviewer and I ask a</p>	<p>1 question, it's timing, content and tone.</p> <p>2 And when somebody reacts or</p> <p>3 responds to that, it's also timing,</p> <p>4 context, and tone, so this is why, you</p> <p>5 know, it's very important to, you know,</p> <p>6 ask the open-ended questions and not being</p> <p>7 accusatorial or confrontational.</p> <p>8 I mean to any victim, I think</p> <p>9 that's common knowledge but especially</p> <p>10 more so to someone who's claiming a sexual</p> <p>11 assault.</p> <p>12 Q. Scrolling down to the top of</p> <p>13 page 23, that first full sentence on</p> <p>14 page 23, you say pretext phone calls are</p> <p>15 considered the bread and butter of consent</p> <p>16 cases.</p> <p>17 Who considers pretext phone calls</p> <p>18 the bread and butter of consent cases?</p> <p>19 A. I do.</p> <p>20 Q. And I've kind of got a basic</p> <p>21 understanding of pretext phone calls.</p> <p>22 Would those type of calls fall into some</p> <p>23 sort of entrapment?</p>

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<p>1 A. Well, that's what defendants</p> <p>2 always claim, yes. But they're not.</p> <p>3 Q. And why not?</p> <p>4 A. It's the way the law is written, I</p> <p>5 mean if you have a one party state, and</p> <p>6 from my understanding Alabama is, that one</p> <p>7 person knows if law enforcement is</p> <p>8 listening in, then it's okay to listen in.</p> <p>9 It's, you know, victims and law</p> <p>10 enforcement often are accused that these</p> <p>11 are entrapment or a tool of entrapment,</p> <p>12 and we've had law up and down, you know,</p> <p>13 the court is stating that it's not.</p> <p>14 Q. Have you reviewed Alabama's law in</p> <p>15 regards to pretext phone calls?</p> <p>16 A. No, sir, I just know that it's --</p> <p>17 that you are a one party state and they</p> <p>18 are allowed.</p> <p>19 Q. Who do you mean a one party state?</p> <p>20 A. When you have a phone conversation</p> <p>21 with, you know, two or more people and one</p> <p>22 person knows that law enforcement is</p> <p>23 listening in, they're aware of it, then</p>	<p>1 you do not need what we call a wiretap</p> <p>2 warrant to listen in.</p> <p>3 Now, the other subjects don't know</p> <p>4 law enforcement is listening in but only</p> <p>5 one does, and that's considered a pretext</p> <p>6 phone call and it's allowed by law.</p> <p>7 Q. Do you know if Jones or Hastings</p> <p>8 ever received training on pretext phone</p> <p>9 calls?</p> <p>10 A. No, I don't. I would hope they</p> <p>11 did but no, I don't know.</p> <p>12 Q. Were pretext phone calls included</p> <p>13 in the homicide's SOP?</p> <p>14 A. I don't recall reading that.</p> <p>15 Q. I'm going to scroll down to page</p> <p>16 24, and it's on the second full paragraph</p> <p>17 under B when you are discussing this</p> <p>18 recording where you say they're</p> <p>19 rationalizing Bunn's lie and you look like</p> <p>20 you quote some of that recording; is that</p> <p>21 correct?</p> <p>22 A. Can I have a moment to read it?</p> <p>23 Q. Sure.</p>
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<p>1 MS. BOLGER: Of course. You</p> <p>2 can read as much as you like.</p> <p>3 A. Okay, sir, are you asking me if I</p> <p>4 quoted him?</p> <p>5 Q. (By Mr. Ritchey) Yes, is this --</p> <p>6 A. Mr. Bunn.</p> <p>7 Q. Well, let me ask you this, is this</p> <p>8 the full quote you were able to obtain</p> <p>9 from that video?</p> <p>10 A. Sir, I haven't seen or listened to</p> <p>11 the video in a long time so I don't know</p> <p>12 the answer to that question. I'm sorry.</p> <p>13 Q. It looks like there's some</p> <p>14 ellipses in there. Is that noting that</p> <p>15 you weren't able to hear the full</p> <p>16 conversation that was taking place on that</p> <p>17 recording?</p> <p>18 MS. BOLGER: Object to the</p> <p>19 form.</p> <p>20 A. I probably -- I probably listened</p> <p>21 the whole thing. Just when I take a</p> <p>22 snippet out of a sentence, then I'll put</p> <p>23 the dots there, yes.</p>	<p>1 Q. (By Mr. Ritchey) Okay. Do you</p> <p>2 know if you heard the whole conversation</p> <p>3 that took place?</p> <p>4 A. I listened to the whole</p> <p>5 conversation, yes, sir.</p> <p>6 Q. But you don't know if there's</p> <p>7 anything said before or after that</p> <p>8 recording?</p> <p>9 MS. BOLGER: Object to the</p> <p>10 form. That's not what he said. He</p> <p>11 doesn't know now. Not in general. He</p> <p>12 said he can't remember.</p> <p>13 Q. (By Mr. Ritchey) Well, what I'm</p> <p>14 asking is you don't know if there is a</p> <p>15 conversation before that recording was</p> <p>16 started or that conversation continued</p> <p>17 after that recording ended?</p> <p>18 A. Are you talking about Mr. Bunn's</p> <p>19 lie at the door? Is that what you're</p> <p>20 talking about?</p> <p>21 Q. No, I'm talking about this video</p> <p>22 you're talking about in this paragraph.</p> <p>23 A. Yes, when they're doing the search</p>

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<p>1 warrant?</p> <p>2 Q. I'm sorry.</p> <p>3 A. Is that what you're talking about</p> <p>4 --</p> <p>5 MS. BOLGER: Scotch, I don't</p> <p>6 think he understands your question.</p> <p>7 Q. (By Mr. Ritchey) Let me try it</p> <p>8 again. In this paragraph you are quoting</p> <p>9 from a video that you've reviewed; right?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you know if that video</p> <p>12 recorded any part of the conversation that</p> <p>13 may have started before that recording?</p> <p>14 MS. BOLGER: Do you mean</p> <p>15 like from the beginning of time? That's</p> <p>16 what I think I'm having a hard time with.</p> <p>17 Q. (By Mr. Ritchey) I'm saying do you</p> <p>18 know if this was the full conversation or</p> <p>19 could there have been parts of the</p> <p>20 conversation that were not captured on</p> <p>21 this video?</p> <p>22 A. Which one are you talking about?</p> <p>23 When they first talk to him at the door or</p>	<p>1 when they're walking through his</p> <p>2 residence?</p> <p>3 Q. I'm talking about the one you have</p> <p>4 quoted here in this paragraph that we've</p> <p>5 been talking about.</p> <p>6 A. That's when they're walking around</p> <p>7 with the video.</p> <p>8 Q. Right. And you don't know what</p> <p>9 was said before that video started; right?</p> <p>10 MS. BOLGER: You mean the</p> <p>11 world on planet Earth? I don't understand</p> <p>12 the question.</p> <p>13 Q. (By Mr. Ritchey) In the context of</p> <p>14 the video. I mean in the house, that's</p> <p>15 all I'm trying to get, is you don't know</p> <p>16 what started that conversation, do you?</p> <p>17 A. No, sir. When he's walking down</p> <p>18 the hallway and they're in another room, I</p> <p>19 can hear people talking but I don't know</p> <p>20 what they're saying and so he comes around</p> <p>21 the corner.</p> <p>22 But that's the conversation you're</p> <p>23 talking about. I don't know what was</p>
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<p>1 said.</p> <p>2 Q. And you don't know the full</p> <p>3 context around what was said in this</p> <p>4 video?</p> <p>5 A. That is correct. I'm sorry,</p> <p>6 Mr. Ritchey, I just wasn't understanding.</p> <p>7 Q. That's fine. It was probably my</p> <p>8 fault not asking good questions.</p> <p>9 Do you know who is talking in the</p> <p>10 video?</p> <p>11 A. No, I do not. His voice sounds</p> <p>12 familiar.</p> <p>13 Q. Have you ever seen the Homicide</p> <p>14 Unit's uniforms that were worn during</p> <p>15 2015?</p> <p>16 A. No.</p> <p>17 Q. Were you aware that the uniforms</p> <p>18 had the word homicide on those uniforms?</p> <p>19 MS. BOLGER: Object to the</p> <p>20 form of the question and that is</p> <p>21 misleading as to what people were wearing</p> <p>22 that morning.</p> <p>23 A. I understand that they had like a</p>	<p>1 pull-over colored shirt that says homicide</p> <p>2 on the breast.</p> <p>3 Q. (By Mr. Ritchey) Scrolling to</p> <p>4 page 25. And I'll scroll up for some</p> <p>5 context.</p> <p>6 I'm looking at the first full</p> <p>7 paragraph or, sorry, first full sentence</p> <p>8 on page 25. It says, for example, the</p> <p>9 officers allowed Bunn to rummage through</p> <p>10 the clothing he was wearing immediately</p> <p>11 before the alleged assault.</p> <p>12 How do you know they allowed Bunn</p> <p>13 to rummage through that clothing?</p> <p>14 MS. BOLGER: I'll say --</p> <p>15 A. If I remember right, that they</p> <p>16 asked him what he was wearing. I'm just</p> <p>17 going through my process here.</p> <p>18 MS. BOLGER: Feel free to</p> <p>19 read the paragraph.</p> <p>20 A. Yeah, I know. I'm reading it now.</p> <p>21 I don't know how I -- I can't remember how</p> <p>22 I came about that, sir.</p> <p>23 I don't know if I saw it on video</p>

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<p>1 or they mentioned it, but it's one of the</p> <p>2 two things.</p> <p>3 Q. (By Mr. Ritchey) And in that next</p> <p>4 paragraph, you say second when the</p> <p>5 officers allowed Bunn to tag along with</p> <p>6 them during the search of his home, he</p> <p>7 reported to officers at the scene that he</p> <p>8 was missing \$300 and a gas card from his</p> <p>9 wallet.</p> <p>10 Are you saying those officers were</p> <p>11 Jones and Hastings?</p> <p>12 A. I'm saying whoever was doing the</p> <p>13 video recording.</p> <p>14 Q. And you don't know who that was?</p> <p>15 A. No. It sounded like Jones and it</p> <p>16 sounded like Hastings was holding the</p> <p>17 camera because I heard them in their</p> <p>18 interviews and interrogation, so their</p> <p>19 voices are different.</p> <p>20 And when I went back and listened</p> <p>21 to the recordings from Mr. Bunn's</p> <p>22 residence I kind of matched them up if you</p> <p>23 will.</p>	<p>1 Q. Do you know who allowed Bunn to</p> <p>2 look through his car?</p> <p>3 MS. BOLGER: Object to the</p> <p>4 form.</p> <p>5 A. I do not -- I do not know.</p> <p>6 Q. (By Mr. Ritchey) And kind of going</p> <p>7 to that next sentence, you said after</p> <p>8 learning of these items law enforcement</p> <p>9 derailed their investigation into</p> <p>10 Rondini's alleged assault in order to open</p> <p>11 a concurrent investigation into this</p> <p>12 purported theft of Bunn's property. How</p> <p>13 did they derail that investigation?</p> <p>14 A. Can you tell me where you're at,</p> <p>15 sir?</p> <p>16 Q. Yeah. I'm going to highlight it</p> <p>17 for you.</p> <p>18 A. Okay. Sure, so they derailed it</p> <p>19 by stopping investigating the sexual</p> <p>20 assault portion of it.</p> <p>21 They did very little to no</p> <p>22 follow-up on the sexual assault portion of</p> <p>23 it and then they directed their</p>
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<p>1 investigation into a theft investigation.</p> <p>2 Q. Okay. So are you saying after</p> <p>3 they went out to the Bunn -- Mr. Bunn's</p> <p>4 residence, that's when they stopped the</p> <p>5 sexual assault investigation?</p> <p>6 MS. BOLGER: Object to the</p> <p>7 form. That's not what the sentence you</p> <p>8 just looked at said.</p> <p>9 A. Look, I don't know exactly when</p> <p>10 that occurred but it was soon thereafter.</p> <p>11 When Mr. Bunn mentions that he had</p> <p>12 a gas card missing and that he would need</p> <p>13 a pass number or code to get into it, he's</p> <p>14 explaining to them about his missing</p> <p>15 items, the money.</p> <p>16 And then I think at that point</p> <p>17 it's just money and a gas card. I'm not</p> <p>18 sure at that point if they knew about the</p> <p>19 firearm or not.</p> <p>20 You know, they at that point when</p> <p>21 Mr. Bunn makes this comment to them either</p> <p>22 when they were still at the house or when</p> <p>23 they left, now this became a theft</p>	<p>1 investigation and they derailed it by not</p> <p>2 talking to her nine friends, not doing all</p> <p>3 the things that we talked about this</p> <p>4 morning and earlier this afternoon.</p> <p>5 They didn't do any of that. In</p> <p>6 fact, once at the station they tried to</p> <p>7 get her to sign a form to stop the</p> <p>8 investigation.</p> <p>9 Q. (By Mr. Ritchey) Later down this</p> <p>10 page under D.</p> <p>11 A. Okay.</p> <p>12 Q. The second sentence from the</p> <p>13 bottom it says, and Bunn consistent with</p> <p>14 the standard protocol for sexual assault</p> <p>15 investigations, should have been required</p> <p>16 to have a SANE exam to secure physical</p> <p>17 evidence. It's towards the bottom of the</p> <p>18 page. Do you see where I am?</p> <p>19 A. Yes.</p> <p>20 MS. BOLGER: Feel free to</p> <p>21 read as much as you need to, Carl.</p> <p>22 Q. (By Mr. Ritchey) Yeah, if you need</p> <p>23 to let me know.</p>

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<p>1 A. I got it.</p> <p>2 Q. Okay. What I'm asking is what's</p> <p>3 the standard protocol for sexual assault</p> <p>4 investigations?</p> <p>5 A. That if you have a suspect that</p> <p>6 you're able to obtain forensic evidence</p> <p>7 from them, that you arrest them, you</p> <p>8 process them to obtain that evidence,</p> <p>9 whether it be physical or scientific.</p> <p>10 Q. Is this a written protocol?</p> <p>11 A. It's so standard, it's ridiculous</p> <p>12 to say you have to write something like</p> <p>13 that down, so I don't know where it would</p> <p>14 be written, but, you know, every sexual --</p> <p>15 you know, sexual assault, you know, sex</p> <p>16 crimes investigator would know that.</p> <p>17 Q. What do you mean it's so standard?</p> <p>18 A. Well, it would be like I don't</p> <p>19 know in your line of work there's the</p> <p>20 things that are standard or that are very</p> <p>21 basic, something that you would learn your</p> <p>22 first year in law school, and if you</p> <p>23 didn't learn it in law school you learned</p>	<p>1 it soon after.</p> <p>2 And, you know, when you go into</p> <p>3 court you have to have evidence of a crime</p> <p>4 to go into court. And the way to collect</p> <p>5 that evidence or obtain that evidence is</p> <p>6 to search for it, to look for it.</p> <p>7 You know, he, Mr. Bunn, is a crime</p> <p>8 scene. Ms. Rondini is a crime scene. The</p> <p>9 bedroom is a crime scene. You have three</p> <p>10 crime scenes here and none of them was</p> <p>11 processed correctly.</p> <p>12 And not to arrest Mr. Bunn is</p> <p>13 just, you know, it's a dagger into a case</p> <p>14 like this, it just kills it.</p> <p>15 Q. So this standard protocol for</p> <p>16 sexual assault investigations that you're</p> <p>17 referencing you learned that through</p> <p>18 training and on-the-job training?</p> <p>19 A. Yes.</p> <p>20 Q. Do you know if Jones or Hastings</p> <p>21 ever received this training?</p> <p>22 A. I do not know if they did or not.</p> <p>23 Q. Do you know if the Homicide Unit</p>
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<p>1 implemented this protocol?</p> <p>2 MS. BOLGER: Sorry, the</p> <p>3 basic thing he just talked about, that's</p> <p>4 what you're calling a protocol? The part</p> <p>5 about how investigators investigate crimes</p> <p>6 which is what Carl just said. That's not</p> <p>7 a protocol. I object to the word</p> <p>8 protocol --</p> <p>9 MR. RITCHEY: He called it a</p> <p>10 protocol. He says the standard protocol</p> <p>11 for sexual assault and just told me what</p> <p>12 it was --</p> <p>13 MS. BOLGER: -- in that he</p> <p>14 does and then he gave you long testimony</p> <p>15 about it, and now you're characterizing it</p> <p>16 as something you train in a training.</p> <p>17 That's not what Carl said.</p> <p>18 Carl, you can answer the</p> <p>19 question --</p> <p>20 MR. COCKRELL: Look, Kate --</p> <p>21 MS. BOLGER: -- you don't</p> <p>22 need me, Carl.</p> <p>23 A. Look, I don't know what they were</p>	<p>1 trained in, Mr. Ritchey, but I can tell</p> <p>2 what they weren't trained.</p> <p>3 They weren't trained to let</p> <p>4 somebody that's accused of a sexual</p> <p>5 assault walk away and not be processed. I</p> <p>6 mean there's no way that they were trained</p> <p>7 to do that, to not speak with that person</p> <p>8 for four days when they had him right in</p> <p>9 front of them.</p> <p>10 I mean they weren't trained to let</p> <p>11 somebody, you know, walk through a crime</p> <p>12 scene and contaminate it. Those things</p> <p>13 they're not trained in.</p> <p>14 Now, were they not trained in</p> <p>15 interviewing somebody that has trauma,</p> <p>16 okay, maybe not. But I'm going to tell</p> <p>17 you there's some super very basic things</p> <p>18 that they didn't do and they should have.</p> <p>19 I mean, they're in a homicide</p> <p>20 unit, correct. I worked homicide. I</p> <p>21 couldn't -- I would not be doing my job if</p> <p>22 I went to a homicide scene and somebody is</p> <p>23 saying yeah, you know, he's the only</p>

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<p>1 person in the house and that's my suspect, 2 I don't arrest him and process him? 3 I mean, it's the same thing. I 4 mean some people want to kind of downplay 5 sexual assault. I mean, I had people 6 doing hundreds and hundreds of years in 7 prison in the state of California for what 8 they've done in a sexual assault. 9 But I mean these very basic things 10 that, you know, Jones and Hastings didn't 11 do I know they weren't trained not to do 12 those. 13 I'm sure they didn't receive some 14 training, but there's other training I 15 know that they didn't receive -- or 16 received and that was clearly, clearly 17 letting somebody, you know, contaminate 18 their crime scene, not arresting a person 19 that's committed a felonious assault on 20 another person and not have them 21 processed. 22 Q. (By Mr. Ritchey) Do you know if 23 there were trained SANE nurses in</p>	<p>1 Tuscaloosa at the time of the Rondini 2 allegations? 3 MS. BOLGER: Object to the 4 form. 5 That has been asked and 6 answered. You can answer it again. 7 A. I don't know if there was actually 8 trained SART nurses or not. 9 Q. (By Mr. Ritchey) I'm scrolling to 10 page 26, and I'll scroll up for some 11 context. 12 I'm looking at the top of page 26 13 where you said the taking of DNA, urine 14 and blood samples from Bunn could have 15 determined his blood alcohol level or 16 whether he had drugs in his system. 17 These tests simply did not occur. 18 This is a serious omission in the 19 investigation. 20 A. Correct. 21 Q. Why was -- why were these serious 22 omissions? 23 MS. BOLGER: Object to the</p>
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<p>1 form. 2 I think we've been over 3 this. You can answer again. 4 A. Somebody that's under the 5 influence, you know, of alcohol their 6 memory may, you know, may not be clear 7 depending on how much alcohol they had or 8 drugs that they had. 9 They may have not done certain 10 things that they would done when they were 11 sober. You know, when I'm interviewing 12 somebody and they're telling me something 13 that happened in the near past, I ask them 14 are you under the influence of alcohol or 15 drugs when this particular thing happened. 16 You know, no, I'm sober. I'm 17 going to give more weight to that 18 statement than I would if somebody says 19 oh, no, I was shooting heroin or I was 20 completely drunk, so that tells me as an 21 interviewer that I'm still going to 22 interview this person but I'm going to 23 have to seriously evaluate whether what</p>	<p>1 they're telling me was not in a drunken 2 stupor or they witnessed it in a drunken 3 stupor. 4 Q. (By Mr. Ritchey) Were Bunn's 5 statements he made on July 6th of 2015 6 different than from the statements he made 7 on July 2nd, 2015? 8 A. Were they different? 9 Q. Right. 10 A. Okay -- 11 MS. BOLGER: Michael, what's 12 wrong? 13 THE WITNESS: Is it okay to 14 go ahead and answer? 15 MS. BOLGER: Sorry, yes, 16 guys. 17 THE WITNESS: Okay. 18 MS. BOLGER: I just did that 19 for verisimilitude so you know I didn't 20 make up my children. Sorry. 21 A. I think he didn't make too many 22 statements at the police station. They 23 were made for him and they were consistent</p>

<p style="text-align: right;">Page 261</p> <p>1 for what he was saying prior at his 2 residence. 3 Q. (By Mr. Ritchey) On page 27, this 4 is towards the bottom of this first half 5 paragraph and I'll scroll up for context 6 for you. 7 You say one infers that they would 8 not have let a potentially dangerous 9 sexual predator freely travel out of town 10 if they had not already made up their 11 minds that he could not possibly be 12 guilty. Let me know if you see where I'm 13 at. 14 A. I see where you're at. 15 Q. Are you saying he's a potential 16 dangerous sexual predator because of the 17 Rondini case or are you basing that on 18 another case or incident? 19 A. I'm basing it on this case. I 20 mean and it's -- if you are investigating 21 someone who's being accused of a sexual 22 assault and holding somebody down and 23 forcing them, you know, to have sex with</p>	<p style="text-align: right;">Page 262</p> <p>1 you that person needs to be arrested. 2 I mean that person is dangerous 3 until you find out otherwise. That's why 4 you arrest them and process them and sit 5 down and talk to him and figure out what 6 happened. 7 I didn't know -- I mean is there 8 another case? Is that what you're saying? 9 Q. I'm just wondering, you know, what 10 made you put that there. I didn't know if 11 that was just based on this case or if you 12 had other information I may not have. 13 A. No. 14 Q. I was just wondering that. 15 A. Okay. No, just based on this case 16 and this case only, but I mean it's the 17 same difference as, you know, letting, you 18 know, somebody that is violent -- I mean 19 this isn't a -- they weren't investigating 20 two people that was not consenting to be 21 under the influence of alcohol. 22 You have a victim who states that 23 she was held down by her hips and her</p>
<p style="text-align: right;">Page 263</p> <p>1 shoulders, the upper part of her body 2 period. 3 That should be what you're 4 investigating until your investigation 5 goes down a path and goes one way or the 6 other. 7 Now, you come across that person 8 in his own residence, you let him go on 9 vacation? I mean it's just odd to me that 10 somebody would let that happen. 11 MS. BOLGER: Hey, Scotch, 12 just in terms of a break and timing, how 13 much longer do you have? 14 MR. RITCHEY: I've got a 15 little bit to go. 16 MR. COCKRELL: Let's take a 17 five-minute break, that will be okay. 18 MS. BOLGER: Nancy, I need 19 to know how long we've been going now, if 20 you don't mind. 21 COURT REPORTER: Okay, can I 22 figure it up while we take a break? 23 MS. BOLGER: That would be</p>	<p style="text-align: right;">Page 264</p> <p>1 awesome. 2 VIDEOGRAPHER: Off the 3 record at 4:12 p.m. 4 (Recess was taken.) 5 VIDEOGRAPHER: Back on the 6 record at 4:17 p.m. 7 Q. (By Mr. Ritchey) I kind of want to 8 talk about the second interview with 9 Rondini, what you're calling the second 10 interview on page 27. 11 Not going to really ask you 12 anything right now about your report on 13 it, but I just want to ask you a few 14 questions concerning the second interview. 15 Are you aware that an assistant 16 district attorney was viewing this 17 interview of Ms. Rondini at the time it 18 was taking place? 19 A. No. 20 Q. Wouldn't an assistant district 21 attorney know when there's enough evidence 22 for an arrest warrant or a detention of a 23 suspect?</p>

<p style="text-align: right;">Page 265</p> <p>1 MS. BOLGER: Again, object 2 to the form and the premise because, in 3 fact, that's not what the testimony is, 4 but you can answer the question. 5 A. Would they know; is that what 6 you're asking? Yeah, they should know, 7 yeah. 8 Q. (By Mr. Ritchey) Wouldn't you 9 think that an assistant district attorney 10 would have proceeded to tell the 11 investigators to obtain a warrant if one 12 was able to be obtained? 13 MS. BOLGER: Again, I 14 absolutely object because there's 15 absolutely no testimony about that, and in 16 fact, your witnesses refused to answer 17 questions about their conversations with 18 the assistant district attorney, so to the 19 extent you're implying any of these 20 conversations existed, I object to this 21 line of questioning, but, Carl, you can 22 answer it as a pure hypothetical. 23 A. Look, I see what you're getting at</p>	<p style="text-align: right;">Page 266</p> <p>1 here. I don't think any attorney watching 2 an interview with one female has the whole 3 picture of what happened. 4 I mean, I don't know what that 5 person's thinking or seeing or what, if 6 anything, they have in front of them. The 7 arrest -- what I'm talking about is arrest 8 for probable cause arrest and that should 9 have been done earlier in the morning. 10 Q. (By Mr. Ritchey) I'm on page 29 of 11 your report. The last sentence of this 12 first half paragraph it says if Jones had 13 conducted a proper interview with Rondini, 14 he could have reconstructed the entire 15 reality of the alleged assault. 16 And if you need time to read it 17 for context, please let me know. 18 MS. BOLGER: Yes, he needs 19 time to read for context. And when you've 20 done so, Carl, feel free to answer. 21 A. What was the question? 22 Q. (By Mr. Ritchey) What do you mean 23 by that sentence?</p>
<p style="text-align: right;">Page 267</p> <p>1 A. It would understand where her 2 state of mind as to that she didn't want 3 to have sex and that that's how she had 4 resisted. 5 You know, with the fact that she 6 makes a big deal about, you know, when I 7 went into the room I sat on the sofa, you 8 know, or chair versus sitting on the bed. 9 You know, she didn't take her 10 clothes off. All these things that she 11 did and had actually told Bunn that she 12 needed to leave to meet with her friends. 13 So in a proper interview, he could 14 have figured that out by asking the proper 15 questions, allowing her to express why she 16 made certain decisions, what she was 17 thinking at the time, and that would have 18 given -- he would have been able to 19 reconstruct what she was thinking and what 20 she was going through at the time that she 21 was in the bedroom. 22 Q. Would what she was thinking and 23 feeling rise to the level of earnest</p>	<p style="text-align: right;">Page 268</p> <p>1 resistance? 2 A. I would say yes. 3 Q. I'm on page 34 of your report. 4 I'm looking under number six, Bunn's 5 interrogation. Scroll down for some 6 context. It flows onto page 35. 7 You're talking about solving and 8 proving a criminal a case. 9 The last sentence of 34 it says, 10 Hastings should have directed his 11 interrogation down a path of proving 12 Rondini's allegations. 13 A. I'm sorry, Mr. Ritchey, I was 14 waiting for your question. 15 Q. I'm sorry. I was trying to give 16 you some time to review, but my question 17 is what did you mean by that sentence? 18 A. Which one? I read the whole thing 19 so -- 20 MS. BOLGER: Yeah, you 21 didn't read the sentence. You read a half 22 sentence. 23 MR. RITCHEY: I believe I</p>

<p style="text-align: right;">Page 269</p> <p>1 read the full sentence. It was Hastings 2 should have directed his interrogation 3 down the path of proving Rondini's 4 allegations. That looks like a period to 5 me after that. 6 MS. BOLGER: Sorry. I 7 thought you read a different sentence. I 8 apologize. We're all getting tired. 9 A. Right. So his interrogation 10 should have been directed to Mr. Bunn as 11 to if he had consent, if he felt that he 12 had consent or not, first of all. 13 Second of all, this whole holding 14 down aspect of it, did you hold her down 15 and if so -- and if he denies that then, 16 you know, why would she say something like 17 that. It's that kind of verbiage that you 18 use in an interrogation. 19 You're interrogating someone 20 because you're trying to prove an element 21 of a crime and in this, again, it's kind 22 of split. One, did you have consent, and 23 the other is the earnest resistance, you</p>	<p style="text-align: right;">Page 270</p> <p>1 know, where did you hear her make comments 2 like hey, I need to go, I have to meet my 3 friends. 4 Yes, I heard that. Well, what 5 does that mean to you? Does that mean 6 that she wanted to have sex with you or 7 she was trying to tell you that she was 8 trying to -- or that she needed to go and 9 be with her friends. 10 None of that occurs. None of that 11 is brought up. The earnest resisting 12 whether he felt that he had consent and 13 the fact did you hold her down. 14 I mean none of that -- well, the 15 holding down part I think he did mention 16 that, but he doesn't go further and say 17 well, why would she say that. 18 So I mean, there was no pushback 19 at all whatsoever, and, in fact, you know, 20 you have, and I don't know if we'll get 21 into this, but, you know, Hastings asked 22 the question and he answers it for him 23 several times.</p>
<p style="text-align: right;">Page 271</p> <p>1 I mean, that's just unheard of. I 2 mean the only time that happens is at the 3 end of a full interrogation where you're 4 trying to clarify certain things. 5 You certainly don't sit down and 6 within, you know, a minute and a half and 7 say, hey, let me put it this way, did you 8 do this, this and this. It's just 9 improper to do that. 10 Q. Couldn't Hastings have spoken to 11 Bunn prior to that video or audio 12 recording? 13 A. At the residence? 14 MS. BOLGER: Object to the 15 form of the question. 16 Q. (By Mr. Ritchey) At any time prior 17 to that audio or video recording. 18 A. I think he spoke with him very 19 shortly maybe at the residence, but as an 20 interview, no, not that I know of because 21 I thought that was Carroll that 22 interviewed him in the backseat of his 23 car.</p>	<p style="text-align: right;">Page 272</p> <p>1 Q. On page 35, I'm looking at the 2 first full paragraph, second sentence from 3 the bottom of that paragraph, it says, by 4 allowing Bunn to leave town to go fishing, 5 Jones exhibited favoritism. 6 A. Yes, I think he exhibited that, 7 yes. 8 Q. How so? 9 A. He let him go. Sir, this, you 10 know, Mr. Ritchey, this is an allegation 11 to Mr. Bunn, his actions, you know, just a 12 few hours before. 13 Even if he didn't play favoritism, 14 it looks like he did. I mean the 15 perspective, you know, when we look at 16 something like that -- or the perception, 17 I'm sorry, is that he did, and I can't 18 think of any other reason why he would do 19 that. 20 And, look, I'm going to -- I'll be 21 quite frank to you, that's not fair to 22 Ms. Rondini and it's actually not fair to 23 Mr. Bunn, right.</p>

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<p>1 I mean if you're an investigator, 2 you go down the middle of the path. I 3 mean, you know, you're investigating a 4 cases, you don't play favoritism to the 5 victim and you don't play favoritism to 6 the suspect. 7 I mean would it be fair to 8 Mr. Bunn that he wasn't exonerated if he 9 didn't do something? Of course. 10 And it's the same with 11 Ms. Rondini. Was it fair to her if she 12 was actually sexually assaulted? So I 13 mean he didn't do anybody a favor by 14 letting him go on this four-day fishing 15 trip or whatever. 16 Q. Why do you say only Jones allowed 17 Bunn to leave to go fishing? 18 A. Because he's the lead 19 investigator, sir. I mean, whether it's 20 his call or not he's the lead 21 investigator. 22 Q. The next paragraph it starts, in 23 addition, I note that this interview of</p>	<p>1 Jones was conducted by Hastings. 2 I'm just assuming that's a typo, 3 it should say interview of Bunn was 4 conducted by Hastings; is that correct? 5 A. That's correct. 6 Q. And then why is it noteworthy that 7 this interview of Bunn was conducted by 8 Hastings? 9 A. Because as the lead investigator 10 the two people that you should talk 11 directly to, no matter what, there might 12 be an exception or two, very, very small 13 one, but you talk to the victim and you 14 talk to the suspect. 15 Because there's a lot of things 16 that the victim is going to tell you that 17 you can confront or corroborate or 18 contradict when you do your interrogation 19 of a suspect. 20 If you piecemeal it out, you don't 21 have the entire story, or at least what 22 you believe the entire story to be. 23 You go into -- look, you're</p>
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<p>1 Investigator Hastings. Do you know at 2 least, you know, 90 percent of what 3 happened here and what Ms. Rondini said. 4 We don't know. 5 I can tell you more likely he 6 didn't just by the questions that he had 7 asked. So who would know that? The lead 8 investigator. That's why you put that in 9 there. 10 Q. Do you know if Jones ever spoke to 11 Hastings prior to this interview of Bunn? 12 A. I do not know that. 13 Q. And do you know if Hastings talked 14 to Jones about the interview of Bunn? 15 MS. BOLGER: Object to the 16 form. Isn't that the same question? 17 A. Was it the other way around? 18 Q. (By Mr. Ritchey) Yes, it was the 19 other way around. 20 A. Okay. I do not know. 21 Q. Does Ms. Rondini's statements that 22 she stated several times that she needed 23 to leave and meet up with friends rise to</p>	<p>1 the level of earnest resistance? 2 MS. BOLGER: Object to the 3 form. 4 A. Yes. In my opinion, yes. I mean, 5 look, you know when a girl's into you. 6 You know, she's making excuses, if you 7 will, because I'm pretty sure that wasn't 8 true that she was meeting with her 9 friends, but it's some kind of a 10 resistance. 11 I mean, she's not jumping into bed 12 with Mr. Bunn, so, yeah, if you're in your 13 bedroom, you know, and the person you're 14 in there with says, oh, by the way, I've 15 got to go, I've got to go meet my friends 16 how is that to me an invitation of hey, 17 let's jump in bed real quick here, so to 18 me, yeah, that is a level of resistance. 19 Q. (By Mr. Ritchey) Does that rise to 20 the level of earnest resistance though? 21 A. Well, I think for Ms. Rondini it 22 is the level of -- I mean for her level. 23 You know, earlier she said she didn't want</p>

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<p>1 to be rude, right.</p> <p>2 She didn't want to be rude, so</p> <p>3 she's doing what most females do,</p> <p>4 especially young girls, they're nice.</p> <p>5 You know, I've had so many victims</p> <p>6 across the years that didn't fight back,</p> <p>7 they wanted to be nice and then they find</p> <p>8 themselves in a bad situation.</p> <p>9 What happened to Ms. Rondini is</p> <p>10 such a classic type of a thing that</p> <p>11 happens to a lot of victims. They paint</p> <p>12 themselves in a corner and they give up, but</p> <p>13 to answer your question I think for her</p> <p>14 level of earnest resistance because she</p> <p>15 doesn't want to be rude, that was her</p> <p>16 level.</p> <p>17 Q. I'm not talking about her level of</p> <p>18 earnest resistance. I'm talking about</p> <p>19 earnest resistance under the law. Does</p> <p>20 that meet the level of earnest resistance</p> <p>21 under the law?</p> <p>22 MS. BOLGER: I'm going to</p> <p>23 object to the form of the question.</p>	<p>1 He's not a lawyer. He's not</p> <p>2 here as a lawyer. He's not presented as</p> <p>3 an expert on what constitutes or doesn't</p> <p>4 constitute earnest resistance under</p> <p>5 Alabama law, so this question is</p> <p>6 objectionable --</p> <p>7 MR. RITCHEY: I believe --</p> <p>8 MS. BOLGER: Carl, you can</p> <p>9 answer if you like.</p> <p>10 MR. RITCHEY: -- I believe</p> <p>11 he has stated an opinion as to that,</p> <p>12 though.</p> <p>13 MS. BOLGER: He's not being</p> <p>14 offered as an expert in this case on what</p> <p>15 earnest resistance is under Alabama law.</p> <p>16 But, Carl, you can answer.</p> <p>17 A. Okay. I don't think in Alabama</p> <p>18 law there's a list of -- a bullet form</p> <p>19 list of what earnest resistance is.</p> <p>20 I think it just states does it</p> <p>21 rise to a level of earnest resistance and</p> <p>22 I think that level is different for</p> <p>23 everyone.</p>
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<p>1 You know, I'm sure some women</p> <p>2 would have fought him off to the death and</p> <p>3 others would have just tried to run out</p> <p>4 the door. Others would have screamed and</p> <p>5 others would have just said I need to be</p> <p>6 somewhere else, I need to leave.</p> <p>7 And that's what her level of</p> <p>8 earnest resistance is.</p> <p>9 As far as Alabama law, the way I</p> <p>10 read it, and I read a very small portion</p> <p>11 of it, that there isn't a list of, you</p> <p>12 know, punch, kick, push, I just didn't see</p> <p>13 that, sir.</p> <p>14 And, you know, from what Mr. -- or</p> <p>15 I'm sorry, Investigator Jones was saying</p> <p>16 at the hospital was did you use the word</p> <p>17 "no", which leads me to believe that</p> <p>18 that's verbiage, right, that's language</p> <p>19 that he's used to is that earnest</p> <p>20 resistance under Alabama law if you use</p> <p>21 the word no, the actual word no, those are</p> <p>22 air quotes, which I hate when people use</p> <p>23 those, but -- so that leads me to believe,</p>	<p>1 not knowing, you know, Alabama law, that</p> <p>2 you can resist by saying no, that you can</p> <p>3 use verbiage.</p> <p>4 Her way of saying no was I need to</p> <p>5 be somewhere else, I need to meet with my</p> <p>6 friends.</p> <p>7 Q. (By Mr. Ritchey) But she never</p> <p>8 actually said the word no?</p> <p>9 A. She never used the word no.</p> <p>10 MR. COCKRELL: Off the</p> <p>11 record.</p> <p>12 (Off the record.)</p> <p>13 Q. (By Mr. Ritchey) Mr. Hershman, did</p> <p>14 you review the Tuscaloosa News or</p> <p>15 Gatehouse Media Article by Stephanie</p> <p>16 Taylor detailing the Rondini</p> <p>17 investigation?</p> <p>18 MS. BOLGER: Object to the</p> <p>19 form. That's not what that does, but you</p> <p>20 can answer it.</p> <p>21 A. Is that the last one that -- what</p> <p>22 was the name of the author, I'm sorry?</p> <p>23 Q. (By Mr. Ritchey) Stephanie Taylor.</p>

<p style="text-align: right;">Page 281</p> <p>1 It was the -- I believe it was published 2 online. 3 A. Yes, I did. 4 Q. Did that article assist or help 5 you form any of your opinions in your 6 expert report? 7 A. No. 8 Q. Did you consider the article in 9 forming your expert report? 10 A. No, not at all. 11 MS. BOLGER: I'm sorry, 12 wait, stop. What article? 13 MR. RITCHEY: Still on the 14 Stephanie Taylor article. 15 Q. Did Ms. Rondini say she was ever 16 afraid of Mr. Bunn or felt threatened by 17 him? 18 A. She didn't say it, but I think 19 when -- I mean she said she grabbed the 20 gun for protection. 21 Q. What did you think that meant? 22 A. That she was scared of something. 23 Q. But you don't know what?</p>	<p style="text-align: right;">Page 282</p> <p>1 A. No. I assume it's the person who 2 just had done something to her. 3 MR. RITCHEY: If y'all will 4 just give me a few minutes, I just need to 5 check over my notes and see if we need to 6 go through anything else, but we can take 7 a short five-minute break. 8 VIDEOGRAPHER: Off the 9 record at 4:45 p.m. 10 (Recess was taken.) 11 VIDEOGRAPHER: Back on the 12 record at 4:54. 13 Q. (By Mr. Ritchey) Mr. Hershman, I 14 just have a few more questions. I may 15 have asked these before, forgive me if I 16 have. Just making sure we got everything. 17 Have we talked about every civil 18 case where you've rendered an expert 19 opinion or report either by affidavit, 20 written report, deposition or trial? 21 A. Yes, I believe so. 22 Q. In the report you've used the word 23 blackout and you've used it a little bit</p>
<p style="text-align: right;">Page 283</p> <p>1 here today. Where did you get that 2 definition of blackout? 3 MS. BOLGER: Sorry, where? 4 What definition? 5 MR. RITCHEY: Definition of 6 blackout. 7 MS. BOLGER: I guess I -- 8 you just referenced his report and today 9 -- 10 THE WITNESS: In my report? 11 MS. BOLGER: -- and I guess 12 I didn't -- that's two different things, 13 and I just didn't know if you're talking 14 about a specific line in the report. 15 A. Yeah, I don't know if I gave a 16 straight definition or an example, but I 17 mean, if you could direct me, I'll take a 18 look at it. 19 Q. (By Mr. Ritchey) Well, I believe 20 you've written blackout in your report and 21 I know you've mentioned it a few times 22 here. Are there two different terms 23 you're referring to?</p>	<p style="text-align: right;">Page 284</p> <p>1 MS. BOLGER: You're just 2 referring to a specific definition, and 3 Carl and I are having a hard time trying 4 to figure out what definition you're 5 referring to. 6 A. You asked where I got a definition 7 from. I don't know if I put a definition 8 in. 9 Q. (By Mr. Ritchey) I'm sorry, you 10 gave -- okay, then why don't we do this. 11 Will you give me the definition of 12 blackout? 13 A. Sure. That's when somebody is -- 14 doesn't remember what they're doing. 15 However, they may be driving a car or 16 they're functioning in some way, but 17 they're just not aware of their 18 surroundings. 19 They could have full-on 20 conversations. They could be texting. 21 They could make a phone call. Again, like 22 I said, they could drive a car, but 23 they're not passed out and I think that's</p>

Carlton Hershman

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<p>1 what we were talking about earlier, 2 blacked out versus passed out. 3 Q. And is that your definition of 4 blacked out or did you get that definition 5 from someone or somewhere? 6 A. I'm sure I got it through training 7 somewhere. I couldn't tell you where, but 8 that isn't something I came up with, no. 9 Q. And I believe you mentioned you've 10 been to Mobile and Huntsville, Alabama; is 11 that right? 12 A. Yes. 13 Q. What was the purpose of going to 14 Mobile? 15 A. Kind of embarrassing but I was in 16 a bowling tournament and, yes, bowling is 17 a sport. 18 Q. I'm sorry -- 19 A. I was there for a US Open for 20 bowlers. 21 Q. Okay. 22 A. Also in Huntsville. 23 (Off the record.)</p>	<p>1 Q. Do you know any police chiefs or 2 sheriffs in the state of Alabama? 3 A. I'm thinking. I know quite a few 4 just from the trainings and stuff and 5 traveling. 6 I don't think so, sir, but I would 7 like to reserve that if down the road I 8 come across one. I'm not personal friends 9 with any of them, I can tell you that. If 10 I do know one, it would be from training. 11 Q. If it comes to you, you know, 12 later down the road, just tell your 13 attorney and she can get that to us. 14 A. Sure. 15 Q. I'm not quite sure if you know 16 this or not, but BuzzFeed's retained 17 another expert in this case name Michael 18 Mertz. Are you aware of that? 19 A. No. 20 Q. Have you ever talked to Mr. Mertz? 21 A. No. 22 Q. And kind of earlier in the day you 23 mentioned that you thought Megan had an</p>
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<p>1 argument with another friend and you 2 couldn't remember how you obtained that 3 information. Do you remember now? 4 A. No, sir, I don't, and it's going 5 to bug me because -- I will look it up, I 6 promise you that. I will let Kate know 7 and she can -- because it will bug me. 8 Q. Okay. Yeah, if you could just 9 provide that to Kate and we can get that. 10 A. Sure. 11 Q. Did you ever determine if 12 Ms. Rondini knew Mr. Bunn before July of 13 2015? 14 A. I don't know if I could do that. 15 The only thing I know is that she stated 16 she had met him on Thanksgiving Day or 17 Thanksgiving of 2014. Other than that -- 18 and she had seen him at a bar but never 19 conversed with him. 20 MR. RITCHEY: I think that's 21 all I have. 22 MS. BOLGER: I have no 23 questions.</p>	<p>1 VIDEOGRAPHER: Off the 2 record at 4:59 p.m., and this concludes 3 the deposition. 4 5 [The deposition was concluded at 6 4:59 p.m., and further deponent saith 7 not.] 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23</p>

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1 CERTIFICATE
2 STATE OF ALABAMA)
3 TUSCALOOSA COUNTY)
4 I hereby certify that the above and
5 foregoing proceedings were taken down by
6 me in stenotype, and the questions and
7 answers thereto were reduced in transcript
8 form by computer-aided transcript under my
9 supervision, and that the foregoing
10 represents a true and correct transcript
11 of the proceedings occurring on said date
12 at said time.
13 I further certify that I am neither
14 of counsel nor of kin to the parties to
15 the action, nor am I anyway interested in
16 the results of said cause.
17 Signed March 16, 2021.
18
19 /s/ Nancy Pannell, CCR
20 NANCY PANNELL, CCR
21 Alabama CCR No. 30, Expires 9/30/2021
22 Commissioner for the State of Alabama at
23 Large, Commission expires 07/17/2021

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